IN THE

Supreme Court of the United States.

OCTOBER TERM, 1877.

No. 327

H. J. ANTHONY, THOMAS R. PRICE, AND WILLIAM SMITH, COMMISSIONERS OF PICKENS COUNTY, PLAINTIFFS IN ERROR,

vs.

THE BANK OF COMMERCE OF RICHMOND, VIRGINIA, DEFENDANT IN ERROR.

This cause comes up by writ of error to the Circuit Court of the United for the District of South Carolina.

PLEADINGS.

The Bank of Commerce, defendant in error here, in its complaint below as plaintiff, alleged that it was a corporation by and under the laws of Virginia, and doing business in Richmond, Virginia, and that the defendants below were citizens of South Carolina.

Further: That it was "the *bona-fide* holder and owner of a lot of coupons for the payment of interest on bonds, which purport to have been issued by the defendants in aid of the Atlanta & Richmond Air-Line Railway Company, under an act of the General Assembly of the State of South Carolina authorizing the same; and it is informed and believes such to be the case.

"That the said coupons are for different sums of money,

depending on the size of the bonds, and are in the form following, to wit:

"'$7.00. The county of Pickens, State of South Carolina, will pay the bearer, on the 1st day of January, 1874, seven dollars, at Pickens Court-House, for annual interest on bond No. 118. H. J. ANTHONY,

"' *Chairman of Board of County Commissioners.*

"'Receivable in payment of taxes.'

"That of these coupons the plaintiff is the true and real owner of seven thousand dollars' worth, for value, which were due on the first day of January, A. D. 1874, and the whole thereof remain and are unpaid, though the payment has been demanded."

The plaintiff below then asks judgment for $7,000, and interest thereon from January 1, 1874. (Transcript, p. 2.)

The complaint is sworn to.

The defendants below answered, under oath, as follows:

1st. That the statements of the complaint are true, except as modified by this answer.

2d. That defendants, as County Commissioners of Pickens county, agreed to issue one hundred thousand dollars of bonds, in payment of the subscription made by their predecessors in office for the said county to the capital stock of the Atlanta & Richmond Air-Line Railway Company.

3d. That, under the advice and personal superintendence of the then solicitor of said Company, defendant, H. J. Anthony, Chairman, and S. D. Keith, Clerk of the Board of County Commissioners, in the absence of the other defendants, signed, sealed, and delivered said bonds, which are the ones referred to in the first paragraph of plaintiff's complaint.

4th. That the signature of H. J. Anthony to the coupons of said bonds was written by various persons, which coupons include those sued for by the plaintiff.

5th. That defendants are ignorant whether plaintiff is the lawful owner of the coupons sued on, and whether it is a body corporate, as alleged in the complaint. (Transcript, p. 4.)

The cause was heard upon the pleadings—no evidence being introduced by either of the parties. (Transcript, p. 5.)

On the hearing, on motion of the plaintiff below, the fourth paragraph of the defendants' answer was stricken out. (Transcript, p. 5.)

The attorney of the defendants below asked the court to instruct the jury as follows:

"That the bonds, being signed by only one of the county commissioners, are void, and the coupons sued on are therefore void," which instruction the court refused to give. (Tanscript, p. 5.)

Judgment was rendered against the defendants, in the words following:

"It is adjudged that said plaintiff recover of said defendants the sum, &c." (Transcript, p. 5.)

Assignment of Errors.

1st. That the court struck out the fourth paragraph of defendants' answer.

2d. That the court refused to instruct the jury that the bonds, being signed by only one of the county commissioners, are void, and the coupons are therefore void.

3d. That the pleadings show that the defendants are not liable as individuals on the coupons sued herein, and that they were so sued and the judgment so rendered against them.

4th. That the county of Pickens could not be authorized, under the Constitution of South Carolina, by the Legislature, to create the obligation which the coupons sued on purports to have created.

5th. That the Legislature of South Carolina has not authorized the county of Pickens to issue bonds in payment of subscription to the capital stock of the Atlanta & Richmond Air-Line Railway Company.

6th. That the act of September 18, 1868, is void as forbidden by the State Constitution, violating sections thereof,

to wit: sec. 20 of art. II, and sec. 8 of art. IX, hereafter set forth.

7th. That the coupons sued on, if otherwise legal, are void, having been signed by only one of the county commissioners of said county.

ARGUMENT.

It appears from the pleadings, that the coupons sued on were coupons of bonds purporting to have been issued by the commissioners of Pickens county, South Carolina, in payment of subscription by said county to the Atlanta & Air-Line Railroad. It also appears that the bonds and coupons were not signed by all the commissioners.

The authority to issue the bonds and coupons in question is claimed under act of the Legislature of South Carolina of September 18, 1868.

That act is as follows:

"AN ACT to amend an act entitled 'An act to incorporate the Air-Line Railroad Company in South Carolina.'

"SECTION 1. That from and after the passage of this act, it shall be lawful for any county, town, or city in this State, interested in the construction of the Air-Line Railroad in South Carolina, or any branch thereof, to subscribe to the capital stock of said company, or of any company with which it may consolidate or unite, such sum, and payable in such manner as the people or the proper authorities of such county, town, or city shall deem best, determine and authorize; and such company is further authorized to receive subscriptions to its capital stock in land and labor as may be agreed upon between said company and such subscribers; and, for the purpose of facilitating the early and economical construction and equipment of its road and works for use, may acquire, by grant, purchase, lease, or otherwise, any estate whatever, and the same hold, use, sell, convey, and dispose of, as the interests of said company may require, and may create and issue, as far as may be necessary, in payment for construction, material, or other costs and needful expenditures of said company, a preferred stock, in such form as may be determined on by the management of the

company, to an amount not exceeding one million of dollars, to be held as a part of the authorized capital stock of said company, and the same, or any portion thereof, to dispose of as the interests of said company shall require.

"SEC. 2. Authorizes the location of the road from the Savannah river to some point on the North Carolina line; also authorizes the company, if united with another line of road, to adopt a modified corporate name, and increase or diminish the number of directors." (Act of September 18, 1868, Stats. at Large of South Carolina for 1868, pp. 75–76.)

It has been uniformly decided (Thompson *v.* Lee, 3 Wall., 327) that a municipal corporation has no power to subscribe to the capital stock of a railroad company or other public improvement without special legislative authority, and, acting upon this well-known principle, the Air-Line Railroad Company in South Carolina procured the passage, on the 18th day of September, 1868, of an act of the South Carolina Legislature, entitled "An act to amend an act entitled an act to incorporate the Air-Line Railroad Company in South Carolina," which provides as hereinbefore stated. This was during the first session of the Legislature after the adoption of the Constitution framed under the reconstruction acts. Up to that time there was no such thing in South Carolina as a corporate district or county. Subsequently, on the 26th day of the same month, an act was passed to define the jurisdiction and duties of county commissioners, the 35th section of which reads: "Each county shall be a body politic and corporate, for the following purposes: 'To sue and be sued, purchase and hold, for the use of the county, personal estate and land lying within its own limits, and to make necessary contracts and do necessary acts in relation to the property and concerns of the county;'" (Stats. of S. C. for 1868, p. 134;) or, in other words, giving them the usual municipal corporate existence, excluding the idea of ability to subscribe to stock in public improvements. The first part of the 40th section of the latter act provides: "That all acts and parts of acts inconsistent with this act, or supplied by it, are hereby repealed." It is submitted that the power given by the act

of September 18 is constructively repealed by the latter act of September 28, 1868.

If unrepealed, the act appears too vague and indefinite and uncertain in its terms to authorize any subscription by the county, for it will be borne in mind that the right to create the debt implies necessarily the right to provide for its payment by taxation, the highest exercise of power known. The "authority to municipalities to impose burdens of any character upon persons or property is wholly statutory, and, as its exercise may result in a divestiture and transfer of property, it must be clearly given and strictly pursued." (Dillon on Mun. Cor., sec. 605, and authorities there cited.) The act is not clear, in that it does not designate how it is to be ascertained, whether a county is interested, nor through what agents the subscription is to be made, nor how the will of the *people* as to the amount of the subscription and manner of its payment is to be ascertained, nor whether that term signifies all male citizens over twenty-one years of age, or citizens generally, men, women, and children, nor who are the proper authorities of the county for such purpose. No county had then a corporate existence, nor any officer or officers whose duties had the slightest relation to such purposes. When the incorporation of the counties was actually effected, there were still no authorities appointed to determine whether the counties were respectively interested in the construction of the Air-Line Railroad in South Carolina, or to determine and authorize an amount of subscription to said railroad company, nor was any means prescribed by which the will of the people on these questions could be ascertained, so that the uncertainty as to the grant is the same. But if the parties, the one or the other of which is to exercise this power, be sufficiently ascertained, how is it to be determined which shall exercise it?

When the act was passed there were no proper authorities to execute this power. It is claimed, however, that the county commissioners (an office since created) have been empowered to execute it. But this is not true; their powers

and duties are definitely laid down in the act authorizing their election, and none of them include the duties required of the proper authorities of such county by the previous act of 18th September, 1868.

Further, there is, in addition to the points already raised, constitutional objection to the authority granted to counties to subscribe to the capital stock of the Railroad Company. In the outset of this argument it was shown that such subscription was not one of the charter powers of a county, and that special legislation was therefore necessary to the grant of that power. The power to create the debt necessarily implies the power to assess and collect taxes for its payment; and if the act of 1868 gives one power, it also gives the other. Art. IX, sec. 8, of the State Constitution, (Rev. Stat. of So. Ca., pp. 145, 146,) provides that "the corporate authorities of counties * * * *may be vested* with power to assess and collect taxes for *corporate purposes.*" The same proviso is found in the late Constitution of Illinois, and it was held by the Supreme Court of that State "to limit taxation by municipalities to local or corporate purposes." (Dill on Municipal Corporations, section 592, citing Howard *vs.* Drainage Company, 57 Ill., 130.)

Further, the statute of 1868 is subject to the constitutional restriction of Art. II, sec. 20, Constitution of South Carolina, which provides that "every act or resolution having the force of law shall *relate to but one subject, and that shall be expressed in the title.*" (Stats. at Large, State of So. Ca. for 1868, p. 9.) The act of 1868 relates to two subjects: the granting of the power of subscription to the county, (for the Railroad Company was certainly authorized to receive all subscriptions which should be made to it, and its charter needed no amendment to enable it to do so,) and the other matters contained in it, which are properly amendments to the charter of the Railroad Company, the latter of which only is expressed by the title to said act, viz.: "an act to amend an act entitled 'an act to incorporate the Air-Line Railway in South Carolina.'"

A similar constitutional provision as to local statutes existed

in New York, to wit: "No private or local bill which may be passed by the legislature shall embrace more than one subject, and that shall be expressed in the title."

An act entitled "an act to amend and consolidate the several acts relating to the city of Rochester" was adjudged to be a local act; but among its provisions was one to increase the number of directors, which the Common Council of the city of Rochester was entitled to elect, to compose the board of directors of the Rochester & Genesee Valley Railway Company. The court said: "No human ingenuity would ever discover that subject from the title of the bill. We are clearly of opinion that in regard to the law in question, in this case the subject, or object, is not embraced in its title, and must, therefore, be held to have been passed in violation of this provision of the Constitution." (People *vs.* Hills, 35 New York, 449, 452, 453.) So, in an act entitled "an act to regulate a highway in the town of Palatine," where the purview of the act provided the reducing the width of a particular highway, involving, in effect, a donation of the land relinquished to the adjoining owner, it was held that the object of the act was not stated in the title, and was unconstitutional. (People *vs.* Com. of Highways of Palatine, 53 Barb., 70. Other cases to same effect are People *vs.* O'Brien, 38 New York, 193; Smith *vs.* Mayor of New York, 34 How., Pr. R., 508.)

Further, if the county commissioners are held to have been the proper authorities of the county, for the purpose of subscribing to the capital stock of the Railroad Company, such sum and payable in such manner as they might deem best, determine and authorize, then it follows that they were acting in their official capacity, for they are in no other way designated, and their authority must be gathered not only from the act before us, but also from all other acts on the subject. From the act of September 18, 1868, we see that the sum and manner of payment of that sum, not the form of any evidences of indebtedness to be issued by them, is left to their discretion, and in the fourth section of the act rela-

ting specially to county commissioners, revised statutes of South Carolina, reads "that *all* the board of county commissioners shall be present for the transaction of business, and shall audit and sign *all* bills and checks. The checks shall, in all cases, be countersigned by the clerk of the board." (Revised Statutes of South Carolina, p. 147.) The bonds and coupons sued are signed by H. J. Anthony, chairman of the board of county commissioners, only, and countersigned by their clerk. Those signatures were insufficient to bind the county in this manner. For these bonds and coupons are, we submit, included in the term "bills," and required by the act to be signed by all of the board.

If we construe the act simply by the words used, we find that bill is a very broad and comprehensive term. The second definition of Webster is: "In law and in commerce, in England, an obligation or security given for money under the hand, and sometimes the seal, of the debtor, without a condition or forfeiture for non-payment. In the latter circumstances it differs from a bond. In the United States this species of security is usually called a note, a note of hand, or a promissory note."

Bouvier makes *bill* to include penal *bonds*, as well as bonds without condition, and this seems to agree with the definitions of our State courts.

Bill, in its general acceptation, means a formal, written statement of any kind; originally it was applied to any sealed document, being derived from Latin *bulla*, a seal.

That is the definition of the common law, and in Potter's Dwarris on Statutes and Constitutions it is said: "If a statute make use of a word, the meaning of which is well known, and has certain definite sense at the common law, the word shall be expounded and received in the manner in which it is understood at the common law."

And it is presumed that the legislature was familiar with the decisions of the courts of this State, which have adopted the common-law definition of this word. In one of these, (Tucker *v.* English, 2 Speer Law, 673,) the report of the circuit judge is: "In this case, the plaintiff attempted to

charge the defendant as maker of a promissory note, under the following circumstances: A third person made a single bond, or bill, under seal, payable to the plaintiff or order. The defendant wrote his name on the back of it. The presiding judge was of opinion that this did not make the defendant the maker of a note of hand, for the paper on which he wrote his name was not a note. *It was a bond without condition, and is, therefore, called a single bill.* And if the defendant's name on the back of it had any legal effect, it could only be as the drawer of a bill of exchange, by appointing the bond to be paid to another. But he could not be considered as promising to pay the contents, according to the tenor and effect. For, in law, the instrument was not regarded as a promise, but as an obligation to pay. The motion for a non-suit was granted." Plaintiff appealed, and a unanimous court, per O'Neall, J., say: "This court concurs in the judgment below, and is satisfied with the reasons given by the circuit judge." Again, in Carter *v.* King, 11 Rich. Law, 132, the paper sued on was:

"One day after date, I promise to pay James M. Carter the sum of one thousand dollars, it being a part of his wife's part of my estate, which note will be collected after my decease, this 30th November, 1846.

WILLIAM KING. [L. S.]

Test: JAMES G. RICHARDSON."

And in delivering the opinion of a unanimous court, Wardlaw, J., says: "But the paper before us is not a promissory note, nor has it been so treated by the plaintiff. This action is debt on a specialty, and the *single bill* in suit is a bond without penalty—an obligation under seal acknowledging indebtedness—a covenant to pay according to stipulation." These bonds, then, are certainly one species of bill, according to the definition of the word in this State, and *all bills* being required to be signed by the three county commissioners, it follows that these bonds have not been signed by the parties authorized by law to make a valid bond for Pickens county, and are, therefore, void. "If the words

of a statute are unambiguous, they must be strictly followed." (Potter's Dwarris, 196.)

There is another method of construing statutes so as to carry out the intention of the legislature, and Chancellor Kent says (1 Kent's Commentaries, page 465): "Statutes that are remedial, and not penal, are to receive an equitable interpretation, by which the letter of the act is sometimes restrained and sometimes enlarged, so as more effectually to meet the beneficial end in view, and prevent a failure of the remedy. They are construed liberally and *ultra*, but not *contra*, the strict letter." "The good expositor," says Lord Coke, "makes every sentence have its operation to suppress all the mischiefs." (Potter's Dwarris, 197.) The mischief may be discovered *aliunde*—that is to say, the former law may legitimately be regarded; the remedy is to be collected from the act itself. The county commissioners' act of 1868 (Stats. of S. C. for 1868, sec. 3, p. 128) provides that "a majority of the board of county commissioners shall constitute a quorum for business."

The Revised Statutes of South Carolina, chap. xix, sec. 4, p. 147, provides "that all the board of county commissioners shall be present for the transaction of business, and shall audit and sign all bills and checks."

It is apparent, by simple comparison, that the evil was the entrusting the business of the county to a majority of the board, and that this was especially true as to the financial business; therefore, a double check was provided for the latter,—first, that all of the board should be present at the transaction of all business; and, secondly, that every bill and check should have the signature of every member of the board, so that if one only should prove faithful to his trust the county should suffer no pecuniary loss by the dishonesty of the other two. Surely no sane man would suppose it would be any protection to the finances of a county to require all of the board to sign any particular classes of securities, leaving others to be signed by the chairman, according to previous custom. For if that were the case he could still create as many fraudulent debts as before, by simply avoid-

ing the prohibited and using the permitted forms—the change in the law would amount to nothing. But adopt the plain, comprehensive meaning of the terms used in the act. Let bill mean as defined by Bouvier—any obligation to pay money—and the change in the law is adopted to accomplish the end in view. Another definition of the same author is an itemized account; so that a bill, used in a general sense, may include accounts and other forms of indebtedness to be audited by the county commissioners, or an obligation to pay to be signed by them.

It is, however, insisted that, though the bonds were illegally issued, yet, being in the hands of innocent holders, they are binding upon the county. In Dillon on Municipal Corporations, section 419, the author sums up what he deduces to be the correct views of this subject as follows: "Officers are the agents of the corporate body, and the ordinary rules and principles of the law of agency are applicable to their acts. Their unauthorized acts are not binding upon the corporate body of which they are the public agents. Ordinarily, their unauthorized representations that they have power to do an act is not binding upon the corporation; that is, the question is as to their power *in fact and in law*—not what they have represented it to be. The only exception to this rule, in addition to the one above suggested, (to wit, where it is the sole province of the officers who issued the bonds to decide whether conditions precedent have been complied with,) is where both parties have not equal means of knowledge as to the extent and scope of their powers, and where the particular character of their commission and authority is, from its nature and circumstances, peculiarly known to the officer or agent; in which case the principal is, or may be, bound by the false representations of the agent respecting his authority and its extent and scope. But when the authority to act is solely conferred by statute, which is in effect the letter of attorney of the officer, all persons must, at their peril, see that the act of the agent on which he relies is within the power under which the agent acts; and this doctrine is recognized

by the Supreme Court of the United States in some of its judgments." Accordingly, bonds issued in violation of an express statute or constitution are void, though in the hands of "innocent holders"; and in the 426th section, "the courts all agree that such a corporation may successfully defend against the bonds, in whosoever hands they may be, if its officers or agents, who assumed to issue them, had no power to do so." (Aspinwall *v.* County of Jo. Davies, 22 How., U. S., 364; Marsh *v.* Fulton County, 10 Wall., 576.) The officers of such corporations possess no general power to bind them, and have no authority except such as the legislature confers. In Marsh *v.* Fulton County, Mr. Justice Field, delivering the opinion of the court, says: "But it is earnestly contended that the plaintiff was an innocent purchaser of the bonds, without notice of their invalidity. If such were the fact, we do not perceive how it could effect the liability of the county of Fulton. This is not a case where the party executing the instrument possessed a general capacity to contract, and where the instruments might, for such reason, be taken without special inquiry into their validity."

It is a case where the power to contract never existed; where the instruments might, with equal authority, have been issued by any other citizen of the county. It is a case, too, where the holder was bound to look to the action of the officers of the county, and ascertain whether the law had been so far followed by them as to justify the issue of the bonds. The authority to contract must exist before any protection as innocent purchaser can be claimed by the holder. This is the law, even as respects commercial paper, alleged to have been issued under a delegated authority, and is stated in the case of the Floyd Acceptances, 7 Wall., 666. In speaking of notes and bills issued or accepted by an agent, acting under a general or special power, the court says: "In each case the person dealing with the agent, knowing that he acts only by virtue of a delegated power, must, at his peril, see that the paper on which he relies comes within the power under which the agent acts.

And this applies to every person who takes the paper afterwards; for it is to be kept in mind that the protection which commercial usage throws around negotiable paper cannot be used to establish the authority by which it was originally issued." "And in this case [says Dillon] the bonds of the county of Fulton, though negotiable in form, and not disclosing or reciting their purpose or origin, were held void in the hands of *bona-fide* holders, for want of authority in the county to issue them—having been voted to one corporation and delivered to (according to the view of the court) another and distinct corporation."

We have already seen that H. J. Anthony, chairman, and S. D. Keith, clerk of the Board, had no power to issue the bonds or coupons in controversy here; therefore they are void in the hands of innocent holders. "A municipal corporation, authorized to subscribe to the stock of a railroad company, must strictly pursue the power." (Bell *v.* R. R. Co., 4 Wall., 598; Oelricke *v.* Pittsburgh, 7 Am., L. R., 274; Howard *v.* County of Crawford, 6 Pitts. L. J., 454.)

The act (law?) under which the bonds are issued is the basis of the contract, and dealers in them are bound to take notice of it. (Mygatt *v.* City of Green Bay, 8 Am. L. R., 271.)

Further, the court below, for reasons already given, erred in striking out the fourth paragraph of the answer of defendants below.

The court also erred in refusing the instructions prayed for by defendants below.

It is also submitted that the court below erred in rendering judgment against the defendants individually, when the suit was against them as officials.

W. W. Boyce,
Counsel for Plaintiffs in Error.

required to be docked oftener than once in twelve months, unless by accident. The average life of a boat like the Vicksburg in like trade I cannot tell.

Q. What is the average life of a boat like the Vicksburg?

A. I can't tell. The Wade Hampton is in the Mississippi River, running to Natchez. She cost us $95,000. Run her since February, 1870. Had her in dock once two or three weeks ago, to straighten her up. Have been steamboating for about ten years. The Vicksburg would have been a good steamboat for two or three years after the charter, but for this accident. The lowest estimate I had for the repair of the shaft was $1,800.

Q. Why did you not repair the shaft of the Vicksburg instead of building a new boat?

A. I considered it the duty of M'r Leathers to do so, as he had agreed to return me the boat in same condition she was, when he chartered her, and it did not suit me to repair her.

20 Q. Why did it not suit you to repair the Vicksburg?

A. My pecuniary condition at the time prevented it, if I had wished to do so; and, further, I wanted a boat of different dimensions. It did not require more coal to run the boat with one engine than with two, but it took a longer time. I think the running of the boat with one engine for a given time would consume about three-fourths of the fuel necessary for running the boat with two engines for the same length of time. I think eight or ten days was the average time for a trip from here to Louisville, but will furnish the exact time. We reached Louisville in July. In June, July, and August there is not so much business as in the winter. In July the trade is very good as to passengers.

(Being asked what his interest was in the Wade Hampton, says, "I decline to answer the question. You can find it out in the custom-house."

The question being repeated, witness still declines to answer.

Proctor for libellant objects to anything being asked the wit-
21 ness about the Wade Hampton, and maintains that the witness might answer, if he is willing to do so, but cannot be compelled, and he further objects to all testimony already taken as to the Wade Hampton.

Under these circumstances, proctor for claimant is unwilling to proceed with the examination, and the commissioner adjourns the question for the decision of the court.)

Testimony taken before K. Loew, United States commissioner, December 9th, 1871.

In presence of Thomas Hunton and Randolph, Singleton and Browne.

GEO. P. WORK recalled and cross examined.

Being asked what was his interest in the Wade Hampton, witness answers:

I owned 7-16ths in her. I have already stated that she cost $93,000, or thereabouts.

GEO. P. WORK.

Sworn and subscribed to before me December 9th, 1871.

K. LOEW,
U. S. Commissioner.

Testimony for libellant, taken before Cha's Claiborne, U. S. commissioner, June 10th, 1871.

Present, Given Campbell, and Randolphe, Singleton & Browne.

L. W. COOPER, being first duly sworn, says:

I am a steamboat-inspector for the board of underwriters, and have been an inspector for 17 or 18 years.

I knew the steamer Vicksburg in 1869. I inspected her by order of the president of the board of underwriters, after she had broken her shaft; this was after Leathers had given up the charter, and while she was lying here at the wharf.

My inspection was a partial one; I went around and examined the sides and knuckles, which were in pretty good order; except a foot-hook which was slightly decayed, there was nothing that I could object to for carrying cotton. As far as I could see she was river-worthy; I could not see through the dunnage to examine her floor-timbers. I reported to the president of the board that I did not give her a thorough examination, and that, as far as I could see, there was nothing in her hull that I could object to for carrying cargo safely in the river. Her rate would have been second class; her age would have been the cause of it; when new she was rated first class. I had inspected her the fall previ-
23 ous; I gave he' a thorough inspection at this time, and considered her safe for twelve months. About a week or two—it may have been three weeks—after she broke her shaft, that I inspected her.

Cross-examined:

The only obstacle for a thorough inspection was the dunnage on the floor-timbers of the boat. There could be no thorough inspection without taking away the dunnage, which I did not do; there was no other reason that I did not regard her as first class, but her age. I did not report in writing to the board of underwriters; I reported to the president, verbally; I did not think it necessary to make it in writing.

L. W. COOPER.

Sworn to and subscribed before me June 10th, 1871.

CHA'S CLAIBORNE,
U. S. Commissioner.

W. H. PHELON, being first duly sworn, says:

My business on the river is engineering on steamboats on the river; have been engineering since 1841; was chief engineer on thes team-
24 boat Vicksburg for over six months, just previous to the time she was chartered to Captain Leathers. When I left the boat, there was nothing on her that I thought necessary to report for repair; there was nothing the matter with her shafts; her machinery worked first-rate; it was well secured and fastened on the boat at the time I left her, otherwise I would have been bound to report her. In the summer previous to the time Leathers took her, when I first went on her, in August or September, I don't recollect, her hull was in pretty good condition for an old boat; better than a good many of them. Her hull was very strongly built; her machinery worked very steady while I was on the boat; the machinery was not rickety; it did not effect the hull while I was on her.

Never noticed any crack on any of her shafts; I had her starboard shaft stripped; had everything off on her except the flange, and there was no crack that I could see on the shaft.

Cross-examined:

I was on the Vicksburg in August or September, 1868. I went on her to repair her; was about eight weeks repairing her, and put the machinery in good order.

I worked more on one side than on the other, because they had partially renewed one side the year previous. On the starboard side of the boat they didn't think the wood-work was strong enough to sustain the machinery for two years to come, as they contemplated to run her that time, and that is the reason that I put new wood-work under the engine; that was the starboard side.

In a conversation with me Capt. Work told me that he wanted to run the boat for two years and get as much money out of her as he could, and that I would be the best judge to know what repairs were to be put on her.

I never heard him say that he intended to abandon her and cut her up at the end of these two years. He came to me after she broke her shaft to take her to Louisville, where he wanted her to use her in building the Wade Hampton. The cabin at that time was a very nice one. I ran her up to Louisville on one wheel.

Redirect:

The repairs that I put under the starboard engine, I consider, made the machinery perfectly steady; the wood-work was strong and staunch; the wood-work on the larboard side was also strong and staunch after I had finished repairing it. I did not put but little work on the larboard side because it had been renewed, as I stated before, and didn't need it.

W. H. PHELON.

Sworn to and subscribed before me June 10th, 1871.

CHA'S CLAIBORNE,
U. S. Commissioner.

Testimony for libellant taken before K. Loew, U. S. Commissioner, this 13th day of October, 1871.

In the presence of G. Campbell, proctor for libellant, and R. H. Browne, of Randolph, Singleton and Brown, for the defendant.

W. F. CORKERY, being duly sworn, says:

I reside in New Orleans; am steward on the steamer Natchez at present, and Capt. T. P. Leathers is her master. Was on board of the steamer Vicksburg as steward and barkeeper at the time she was chartered in 1869.

I didn't know anything about the private arrangements of Captain Leathers and G. P. Work, except that I was to deliver up the Vicksburg to Captain Leathers. I did deliver her up to Captain Leathers about five or six days after I was told to do it.

Captain Leathers took possession of her; he put a crew on her and ran her as a weekly packet between Vicksburg and New Orleans. I was on her all the time as steward and bar-keeper; I exercised no control over the boat after I delivered her to Captain Leathers, excepting when acting in my capacity of steward; as steward I was subject to the orders of Capt. Leathers. I think Captain Leathers ran her about five weeks under the charter; can't tell exactly; he stopped running her because she broke her shaft.

I suppose the occurrence took place about fifteen miles above New

Orleans. We were going at our usual rate of speed, and all at once the shaft broke, and we had to stop and come back to the city that
28 night. Captain Leathers brought her to the landing, and we remained there until he chartered another boat, about a week afterwards; during that time we remained on the Vicksburg; Captain Leathers had control over her during the time we remained on her, until Saturday morning, which was the day that we left here, in the evening. Captain Leathers that evening delivered the Vicksburg to me, as that was the understanding in the charter; I was to deliver her to him, and he was to deliver her to me when he got done with her. I went on the Henry Ames with Captain Leathers, after I had delivered the Vicksburg to M'r Work. I know that Captain Leathers had an idea of rechartering the Vicksburg; that is, after his first charter expired.

On the Friday before she started out on her last trip under Captain Leathers, while we were lying in the port of New Orleans, Captain Leathers told me to offer $1,000 a month to Captain Work for the boat; that he was paying too much for her; to offer that sum for a recharter. I went to see Captain Work, to whom I made known Cap-
29 tain Leathers' proposition; he said no, that the boat was worth more. I then asked him if he would take $1,200. I cannot say whether Captain Leathers had instructed me to make the latter proposition or whether I made it of my own accord. Captain Work declined the offer.

It was the Saturday following this that she broke her shaft. When Capt. Leathers took possession of the boat under the charter, he remarked about several parts of the boat that were in bad order, parts of the lower deck, the sheathing in front of the boilers, the hog-chain braces going down through the deck. I considered the Vicksburg a safe passenger-boat during the time I was on her; have been travelling on the river thirty-three or thirty-four years.

Four or five months before the Vicksburg was chartered, Captain Work had her repaired considerably on the outfit, i. e., as to the cabin painting; that was my department in the boat; know nothing as to the extent of the repairs that were put on her hull, machinery, and other things of that kind. I didn't take any notice of it because that
30 was not in my line. I saw the carpenters and engineers work, to what extent I didn't know; outside workmen, and the boat's also; she was undergoing repairs at the time.

When Captain Leathers told me to make that proposition for a recharter he did not say that the boat was not fit to carry passengers or freight. The Vicksburg did her regular trips while Captain Leathers had her, and carried on her regular business as any other packet on the river; when I received the boat from Captain Leathers to be delivered to Captain Work, I knew that the time of the charter had not expired; received her because the boat was not able to do any duty; she was not fit for duty, and Captain Leathers said she was of no further use to him. I was to deliver the boat to Captain Leathers and to receive her from him; nothing was said about it as to the beginning or end of the charter.

Q. State whether or not Captain Leathers stated to you that he did not intend to keep the boat any longer.

(Objected to as leading; that the witness has already answered that question once before in the negative.)

31 A. I don't know the exact words that he said, but he did say that he had no further use for her. Captain Leathers going off the boat, and taking the crew off her, was a delivery to me.

Cross-examined:

The whole paraphernalia of the cabin was left to me by Captain Work, when I turned the boat over to Captain Leathers.

Q. Did you continue in charge of the cabin, of the crockery and kitchen department, as the agent of Work, while Captain Leathers was running the boat?

A. Yes, sir. I didn't go on the Henry Ames on the first trip after she was chartered by Captain Leathers; I remained in charge of the Vicksburg as the agent of Work, after she had been turned over to me by Leathers.

I passed by and looked at the crack in the shaft, but did not examine it closely; this was the next day after it was broken; the part that was broken appeared to be rusty; I can't say whether it was all rusty or not; I don't believe there was any damage done to the wood-work
32 by the breaking of the plank; there was no serious damage done; we were in deep smooth water at the time of the accident. I joined the Vicksburg in October, 1868.

Q. At the time the charter was made was it easy or difficult to obtain a suitable boat to run in that trade?

(Mere opinions of the witness objected to by proctor for libellant and also as irrelevant.)

A. It was easy. Captain Leathers could have chartered the Henry Ames before he chartered the Vicksburg, and it was partly on my account, because I had the bar on the Vicksburg, that he chartered her. The Vicksburg was built in 1860. She came out in October or November, 1860.

There was a competent crew on board of the Vicksburg during the time Captain Leathers had her; the same man that was on her when the shaft was broken, was the same one that was on her as chief engineer when she first came out.

I don't think there was any extensive repairs done to the hull at
33 the time the cabin was fixed up. There was no other repairs to the hull of the Vicksburg but those made from the time I was on her in October, 1868, until the breaking of the shaft except those I have just referred to, and something done during the week before, Captain Leathers told me to have done, sheathing forward before the boilers, and hog-chain braces going through the deck, to which I had shoes put under; also some planks on the guards which Captain Leathers pointed out to me.

In October, 1868, when I went on her, she was then undergoing repairs at the foot of Jackson street; the reason of the hog-chain braces going through was caused by rottenness of the deck. I never examined the hull of the Vicksburg further than the decks.

Redirect:

Q. You said in your cross-examination that the paraphernalia of the cabin, pantry, and kitchen were left to you by Captain Work, and that you continued in charge of these things as the agent of Work. Now, state whether or not you were there to look after and take care of these things as a friend of Capt. Work.

(Proctor for defendant objects to the question as leading, in reference to that part of the question as to his being there as a friend of Captain Work.)

A. Yes, sir.

Q. Did Capt. Work pay you for looking after his interest, and seeing that his property was not damaged in the cabin, pantry, and kitchen?

A. No; the way of it was this: Capt. Work told me in the presence of Capt. Leathers that I was to remain on the boat as steward and barkeeper, and Capt. Leathers said that that was all right, he'd like to have me on board. Capt. Leathers paid me while I was acting as steward during the time of the charter.

Q. State whether or not, as to the control of the cabin, etc., you were under the orders of Capt. Leathers, or whether Capt. Leathers was under your orders.

A. I was under his orders.

Q. You had control of the cabin, pantry, and kitchen as steward, in subordination to Capt. Leathers, did you not?

(Objected to as leading.)

35 A. Yes, sir. In relation to the broken shaft, I know it takes a very short time for water or damp to make iron rusty.

Q. Do you know whether Capt. Leathers knew the age of the Vicksburg when he chartered her?

(Objected to as a mere opinion; that Captain Leathers is the best witness to prove that fact.)

A. I presume he did. When Captain Leathers came aboard, after he had chartered the boat, and made observation as to certain things that needed repairs, that he desired before he commenced running the boat.

Recross:

Q. Did you remain on that at the instance of Captain Work?

A. I did.

Q. Were you not on her to look after and protect the property of Captain Work?

A. I was.

Q. Did this continue during the charter as well as the week prior to the delivery?

A. Yes, sir.

Redirect resumed:

I owned the bar on the Vicksburg at that time, and when I say I was left on her to protect the property of Captain Work, I meant
36 things that could be stolen or taken away; the movables, such as brooms, *such as brooms*, trucks, etc., everything from the water up.

W. F. CORKERY.

Sworn to and subscribed before me 13th October, 1871.

K. LOEW,
U. S. Commissioner.

Adjourned till to-morrow, 14th October, 1871, at 10 a. m.

SATURDAY, *October 14th*, 1871—10 a. m.

Present, G. Campbell and R. H. Browne.

JNO. RUTH, being duly sworn, says:

I reside in New Orleans, and am a boiler-maker by occupation. I made some repairs on the steamer Vicksburg's boilers in 1869, just before Capt. Leathers took her. I did what I was ordered to do by the inspector, M'r Whetmore. I could not say whether they were in good condition after I had repaired them. I suppose they were. I gave my testimony about the same thing in the summer of 1869, before the local inspectors. Don't recollect the amount of my bill for doing that work.

Cross-examined:

A new set of boilers for steamboats in the river will sometimes require repairs every two months, and sometimes will last three
37 years without repairs. It depends upon the care taken of the boilers, and also upon the material they are made of. From their appearance, they were old boilers.

Q. If it had been left to you, as a boiler-maker, to say what repairs should be done upon those boilers, when you did repair them under Whitmore's instructions, would you have done more work than you did do, and didn't they require really more than was done? Please answer this question on your skill as a boiler-maker.

(Objected to as irrelevant and hypothetical.)

A. I am not allowed to pass my judgment upon any man's boilers when I am called upon to repair them.

(Question repeated to witness, with the same objection as above.)

(Witness answered:) I don't know whether it was necessary to do more or not. I have done all the work that I was ordered to do. I did the work about five or six weeks before Capt. Leathers took the boat. I did not examine the boilers all over. I just did but what was pointed out to me by the inspector to be repaired.

JOHN RUTH.

Sworn to and subscribed before me October 14th, 1871.

K. LOEW,
U. S. Commissioner.

38 *Testimony taken before Alfred Ingraham, esq., commissioner.*

Given Campbell, esq., for libellant; Mess'rs Randolph, Singleton & Browne for respondent.

NEW ORLEANS, *January 8th*, 1872.

JOHN CLINE sworn and examined on behalf of libellant.

By M'r Campbell:

Q. Where do you live?

A. In New Orleans.

Q. What is your business?

A. Steamboating.

Q. Did you have anything to do with the steamboat Vicksburg in 1869?

A. I believe that was the time that I took her to Louisville. I took her *took her* to Louisville about that time.

Q. Where was she when you went aboard of her?

A. She was lying at Gretna, opposite New Orleans.

Q. About what time was that?

A. I think it was about the 23rd of June, 1869.

Q. Who employed you to go on her?

A. Captain Work and Captain Tobin; he employed me to take her to Louisville.

Q. For what purpose?

A. To rebuild there.

Q. You were to go in what capacity?

A. As captain of her.

39 Q. State what you did after you went aboard.

A. Well, I hired a crew; there was fuel aboard of her, eight-

een hundred barrels of coal, when I went aboard. I got the necessary stores and crew to take her there.

Q. What was her condition at that time; was she in good order?

A. She had a broken shaft.

Q. Did you take her to Louisville?

A. Yes, sir; on one wheel.

Q. When did you leave New Orleans?

A. I think it was about the 24th of June—the 23rd or 24th.

Q. Did you go up to Louisville right straight, without unnecessary delay?

A. Well, except a little storm, and one thing or another; we had a storm or two, but nothing else.

Q. What time did you arrive in Louisville?

A. The 3rd of July; the evening of the 3rd.

Q. Did you carry any freight or passengers on her?

A. No, sir; nothing.

Q. Why?

A. Well, she was not in a condition for it.

Q. What did it cost to carry that boat to Louisville?

40 A. Well, I could not state the exact amount, but I know pretty near what I paid out.

Q. How much did you pay out?

A. Well, I could not recollect now.

Q. If you were shown a list could you tell whether it was correct or not?

(Shown paper marked "P P.")

A. Yes, sir; this list is correct; my eyesight is bad; these items are all correct.

(M'r Campbell offered in evidence the document marked "P P.")

Q. Were these charges specified in this account reasonable?

A. Yes, sir; I have the bills and receipts to prove all that.

Q. I ask you whether the rate of charges was reasonable?

A. Yes, sir, very reasonable; the lowest that they could be made, I think.

Q. These amounts were paid out by you?

A. Yes, sir.

Q. Did Captain Work repay you the amounts?

A. Yes, sir.

Q. They were necessarily expended in carrying the boat from here to Louisville?

A. Yes, sir.

Q. Do you know who bought that fuel?

A. Captain Work.

41 Q. For what purpose?

A. For taking her to Louisville.

Q. Was that fuel consumed in carrying the boat from here to Louisville?

A. Yes, sir. It was not quite enough. I had to buy some more on the way. It is charged in the bill, I think.

Q. Now, captain, in carrying that boat up the river from New Orleans to Louisville, did you observe how she worked, and the condition as to staunchness outside of the broken shaft?

A. Everything worked well and was in good condition.

Q. Did you notice?

A. Yes, sir.

Q. Was she well fastened or joined together?

A. Well fastened and everything complete.

Q. State whether the machinery was steady.

A. The machinery was all in good working condition. There was no defect about anything except the broken shaft. The boat was in good condition.

Q. How did you find her hull?

A. Good and sound.

Q. State whether or not she leaked any.

A. Not on the trip, she did not. We used her pretty rough after getting up there, trying to get her over the falls.

Q. Explain that.

A. We wished to get her above the falls.

42 Q. Just explain what usage she received.

A. We had two tow-boats ahold of her, and all the steam we could carry on them and on herself, dragging her on the rocks. We had to give it up.

Q. You could not get her over?

A. No, sir.

Q. What effect did that have on her?

A. Not a bit. She did not make water. I brought her and laid her up below the falls in good condition.

Q. Did you notice the gallows-frames on that boat?

A. Not particularly; nothing more than to see that they were good and sound.

Q. Was your attention attracted to them particularly?

[A. Not particularly, not to the broken one. The other one worked well enough. I saw no defect in it.

Q. State whether or not it seemed to be sound and staunch. What was the condition of the gallows-frame?

A. It was good. I stayed and tore her up when I got her there, and her gallows-frames were good and sound, and nothing more was the matter with them.

This reference approved.

F. B. VINOT, *D'y Clk.*]

Q. Do you mean to say that you superintended the job?

A. Yes, sir. There was no defect about her water-wheel beam.

Q. Just state distinctly and fully how you found the gallows-frames, and how you found her water-beams and other running-gear of the boat.

A. I found everything sound and in good condition, as much so as any boat of that age could be, doing the business that she had done. Her gallows-frames were perfectly sound. I think they were not

43 very old. If I am not mistaken, they had been put in a year or two previously. I was on the boat a year or two before she was torn up, and those gallows-frames were new, not exceeding one or two years old. She had new wheel-houses and gallows-frames and all during my time on her.

Q How long was it after you arrived before she was torn to pieces?

A. Well, she was not entirely torn up until November, I think.

Q. Were you present when her machinery was taken off from her and her gallows-frames removed?

A. Yes, sir. I had them taken down, and the iron taken out of them for a new boat.

Cross-examined by M'r Singleton:

Q. What became of the hull?

A. We sold it to Varbel, a pilot at S't Louis, for stone-barge.

een hundred barrels of coal, when I went aboard. I got the necessary stores and crew to take her there.

Q. What was her condition at that time; was she in good order?

A. She had a broken shaft.

Q. Did you take her to Louisville?

A. Yes, sir; on one wheel.

Q. When did you leave New Orleans?

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A. No, sir; nothing.

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Q. Did you notice?

A. Yes, sir.

Q. Was she well fastened or joined together?

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Q. State whether the machinery was steady.

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Q. How did you find her hull?

A. Good and sound.

Q. State whether or not she leaked any.

A. Not on the trip, she did not. We used her pretty rough after getting up there, trying to get her over the falls.

Q. Explain that.

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F. B. VINOT, *D'y Clk.*]

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Q. Just state distinctly and fully how you found the gallows-frames, and how you found her water-beams and other running-gear of the boat.

A. I found everything sound and in good condition, as much so as any boat of that age could be, doing the business that she had done.

43 Her gallows-frames were perfectly sound. I think they were not very old. If I am not mistaken, they had been put in a year or two previously. I was on the boat a year or two before she was torn up, and those gallows-frames were new, not exceeding one or two years old. She had new wheel-houses and gallows-frames and all during my time on her.

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Q. Were you present when her machinery was taken off from her and her gallows-frames removed?

A. Yes, sir. I had them taken down, and the iron taken out of them for a new boat.

Cross-examined by M'r Singleton:

Q. What became of the hull?

A. We sold it to Varbel, a pilot at S't Louis, for stone-barge.

A. Well, I believe Captain Tobin sold her. He got nine hundred dollars, I understand, for her.

Q. What was the length of that hull?

A. Well, I could not say her length exactly; it was somewhere about two hundred and thirty-five or two hundred and forty feet. I have measured it, but I cannot recollect exactly.

44 Q. What was the length of the hull of the Hampton, into which this old boat was turned?

A. Her length was two hundred and seventeen feet, they told me. I never saw it measured. That is what I understand her length was from the builders.

Q. What would it cost to build such a hull as that of the Vicksburg—to build it anew?

A. Well, I hav'n't any correct idea. It depends upon the times. At the time the Hampton's hull was built, I suppose it would cost fifteen or sixteen thousand dollars, or somewhere along there.

Q. Did you take everything that was good on the Vicksburg and put it on the Wade Hampton?

A. Yes, sir; pretty much everything. We used a great deal of her stuff and machinery.

Q. Did you take her boilers?

A. No, sir. We got new boilers.

Q. Did you take the gallows-frames and put them on the Wade Hampton?

A. No, sir; they were on a different plan. The new boats were
45 of a different plan from the old ones. They were arches instead of gallows-frames.

Q. What did you do with the gallows-frames of the Vicksburg?

A. We got the iron off of them and let them float away. The high water carried them off; in fact, they broke away from us in the high water. We had them tied, and the river raised very suddenly and swept them away.

Q. What was the age of the Vicksburg?

A. About eight years, I think.

Q. You stated that her hull was sound and in good condition?

A. Yes, sir.

Q. Why did you not use it in place of the Hampton's new hull?

A. Well, it didn't suit.

Q. Why?

A. I' drew too much water, and was longer than they wanted and heavier, and it was a stronger hull than the Hampton's.

Q. What would it have cost to have it cut down to the size of the Hampton?

A. It would have been a very difficult matter to have it done; it would have spoiled the model and weakened the boat.

Q. What is the general average life of a steamboat?

46 A. Well, it depends a good deal upon circumstances. They average from six to twelve and fifteen years.

Q. How many boats did you ever know to last fifteen years?

A. We have not very many now.

Q. How many did you ever know to last fifteen years?

A. We have not very many now.

Q. How many did you ever know? Name them.

A. Well, I think the Lafourche was about that age when she was torn up.

Q. Well, go on.

A. The Aleck Scott, a S't Louis boat, was fully that old; I could say her exact age. I couldn't say her exact age. I know she was about that. I cannot recollect the names, but I knew several that lasted that long. The Continental, I think, is well along that age.

Q. When were you on board the Vicksburg before you took charge of her to carry her to Louisville?

A. I was on her at the time Captain Tobin bought her from Hicks.

Q. Who owned the Vicksburg when you took her to Louisville?

A. She was owned by Captain Work and Captain Tobin.

47 Q. What was the interest of each in her?

A. Well, I couldn't say that.

Redirect by M'r Campbell:

Q. What was your business on board the Vicksburg when you ran on her?

A. I was mate of her previous to that time.

Q. How long were you mate of her before Leathers chartered her?

A. Well, I had been sick some time before that, and had not been on her, but the year previous to that I was on her the whole year, or nearly so, as well as I can recollect.

Q. As mate, state whether or not it was your duty to look at the hull and examine it.

A. Yes, sir; that was my duty—to know the condition of the hull and the boat at all times.

Q. State what was the condition of the hull of that boat when you left her as mate.

A. The condition of it was good. I had her on the docks several times. Not over a year previous to Leathers' chartering her I had her on the dock.

Q. State the result of that docking, and how you found her.

A. She was then in very good condition—better than any sup-

48 posed for a boat of her age. The dock-man told me that he had rarely seen as good a hull for a boat of her age. He told me that he didn't think that the boat was over four years old.

Q. Who was the dock-man?

A. Vallette. He pronounced her well built, and well fastened, and good at the time.

Q. Did you examine her when you started up to Louisville?

A. Yes, sir.

Q. State how you found her then.

A. In good condition; not leaking; fit for business; in good condition for business. I would have loaded her down at any time, or took a load of freight on her.

Q. State how long you have been engaged in steamboating.

A. Since I was a boy.

Q. What is your age now?

A. I am forty-two this fall; past forty-two.

Cross-examination resumed by M'r Singleton:

Q. In what trade was this boat engaged?

A. She was engaged, when I was mate of her, in the Ouachita River trade, and ran from here to Trenton and Ouachita City.

49 Q. How long had she been engaged in that trade?

A. Between two or three years, I think.

Q. Was she a suitable boat for that trade? Did she make money in that trade?

A. Yes, sir, a very suitable boat; she was very lucky, and never had any accidents.

Q. What trade was the Wade Hampton engaged in?

A. She was built for the same trade.

Q. Did she run in it?

A. She ran a while in it.

Q. Did you transfer the cabin of the Vicksburg to the Wade Hampton?

A. Yes, sir.

Q. What else did you transfer to the Wade Hampton?

A. Her machinery and cylinders.

Q. What machinery?

A. Cylinders and doctor, a small engine for supplying the boilers.

Q. What else?

A. Well, all her iron.

Q. About the only thing you left out of the Vicksburg was the hull?

A. The hull and boilers.

Q. And what else?

A. The shafts.

Q. What did the Vicksburg draw in the Ouachita River? What depth of water did she draw when she was loaded?

50 A. I think about five feet, as near as I can recollect, or five feet and a half.

Q. How many years had she been running in the Ouachita?

A. Nearly three years, I think, or fully three years; along there somewhere.

Q. How many bales of cotton did she carry?

A. Well, I put about as big loads on her as ever she had. I believe that in the Ouachita trade we never had over two thousand bales on her; in fact we never got full loads.

Q. Did you ever run on the Wade Hampton?

A. Yes, sir.

Q. What did she draw?

A. She drew about four feet and a half at one end, and about three feet and something at the other; I forget.

Q. How many bales of cotton did she carry?

51 A. Well, we never had a load on her while I was on her. I believe her capacity was about three thousand bales. I have loaded her with other freight, but not with cotton.

Q. Was she larger or smaller than the Vicksburg?

A. She was smaller than the Vicksburg.

Q. What was the capacity of the Vicksburg?

A. She was not built for cotton, and it was difficult to load her with it. She would carry thirty-five hundred bales fully; she would carry the weight of that.

(Signed) JOHN CLINE.

Taken in short-hand and sworn to and subscribed before me this 8th day of January, A. D. 1872

ALFRED INGRAHAM,
Commissioner of the U. S.

Expenses of the steamer Vicksburg while on her way to Louisville, K'y, with one shaft broken, leaving New Orleans June 24th, and arriving in Portland in July, as paid by John Cline.

	Paid pilots	$150 00
	" carpenter	25 00
	" engineer	50 00
	" 2d do	30 00
	" Bob Smith	11 70
52	Paid cabin-boys	$10 00
	" four firemen	56 90
	" four rousters	47 00
	" expenses on the way	94 65
	" " at Portland	37 50
	" watchman	25 00
	" John Cline	50 00
		$587 75

JOHN C. SINNOT sworn and examined on behalf of libellant.

By M'r Campbell:

Q. What is your business?

A. Steamboat agent.

Q. Have you been a steamboat man?

A. Yes, sir.

Q. For how long a time?

A. I commenced steamboating in 1840, and I quit steamboating after the surrender. I have not steamboated since the surrender.

Q. You steamboated, then, about twenty years?

A. Yes, sir.

Q. Were you a steamboat agent in New Orleans in 1869?

A. Yes, sir.

Q. What was your firm?

A. Sinnot and Adams.

Q. Did you know the steamboat Vicksburg?

A. Yes, sir.

Q. Were you well acquainted with her?

53 A. Well, no; not particularly so. I knew that there was such a boat.

Q. Have you ever been on her?

A. Yes, sir.

Q. Do you know whether there was any demand, about May or June, 1869, for steamboats in the Vicksburg trade?

A. I don't know; I do not think there was any great demand.

Q. Or in the Ouachita trade?

A. I do not think there was much doing, from my recollection of it.

Q. Do you know what a boat like the Vicksburg would have been worth on a charter in May or June, 1869?

A. There is only one way that I could get at that thing, and that is what you could give for her. I chartered one last week, and she is worth a great deal more now than I paid for her.

Q. Well, at that time, May or June, 1869?

A. At that time a steamboat would be worth as much as now, or more.

Q Give us, as near as you can, what you consider she would be worth on a charter of two months.

A. I suppose she would be worth two thousand dollars a month.

54 That depends entirely upon what trade the man has got, and what he can pay. We chartered one, and we paid twenty-five hundred dollars a month for her, and I don't think she was worth sevteen hundred dollars. It depends entirely on the business a man does, and what he can afford to pay; but I suppose for that boat he would be able to pay two thousand dollars a month. I would consider that a very fair charter for her at that season of the year.

Q. Do you know what would be considered the average life of a well-built boat?

A. Well, I know of the S't Charles being a very old boat.

Q. Well, the average life of a well-built boat?

A. Well, eight or nine years, I suppose.

Q. Have you ever known a steamboat to last longer than that?

A. Yes, sir; I have mentioned one, the S't Charles, which was built in 1854, and classes now as a good boat on the Alabama River.

Q. She was built in 1854?

A. No, sir; I mistake; she was built in 1856, when Buchannan was elected President.

55 Q. Do you know of any other very old boats?

A. I think the Aleck Scott was twelve or thirteen years old.

Q. Do you know the age of the Continental?

A. I do not. The National was built in 1860. She is considered the best boat on the Tombigbee River to-day. I think she was built in 1860 or 1861.

Cross-examined by M'r Singleton:

Q. Are boats worth more later or earlier in the season?

A. Later in the season they are worth more. It is generally supposed that when the rivers are up boats can make more money.

Q. They are worth more then?

A. Yes, sir.

Q. How long does the Ouachita River generally keep up?

A. It has kept up till July.

Q. Do you recollect how the water was in 1869?

A. I think there was plenty of water when she withdrew from the trade; I am not positive.

Q. Do you recollect when the charter was made to Leathers?

A. I recollect it, but the time I cannot recollect.

Q. Where was the Vicksburg when the charter was made?

56 A. I cannot tell.

Q. Was she not lying up?

A. I do not know positively whether she was or not. I think she was running, but of that I am not positive.

Q. Do you know anything about what was given for her on that occasion?

A. No, sir; I heard that he gave seventeen hundred and fifty dollars.

Q. Was she not lying up at the time she was chartered?

A. I don't know; I cannot say.

(Signed) JOHN C. SINNOT.

Taken in short-hand and sworn to and subscribed before me this 8th day of January, A. D. 1872.

(Signed) ALFRED INGRAHAM,
Commissioner of the United States.

Received from libellant $20, commissioner's fee and charges.
(Signed) ALFRED INGRAHAM,
Commissioner of the U. S.

Testimony taken by consent, in the office of Mess'rs Randolph, Singleton and Brown, March 23rd, 1872.

Given Campbell, esq., representing libellant, and C. B. Singleton representing claimant.

H. J. DUDLEY, sworn and examined for libellant, says:

I reside in Algiers.

Q. What is your business?

A. Ship-carpenter.

Q. How long have you been a ship-carpenter?

A. I went at the trade when I was sixteen years old.

Q. How long have you been at the trade?

A. Ever since I was sixteen years old, and I will be thirty years old on the 11th of May.

Q. You have been on many steamboats as ship-carpenter?

A. Yes, sir.

Q. Have you ever been on the Vicksburg?

A. Yes, sir.

Q. When did you first go on her?

A. I think I went on her in November; I do not remember what year.

Q. Was it before Captain Leathers took her?

A. Yes, sir; I repaired her that season.

Q. Then it was 1868. What repairs did you make on her; was this before or after the charter to Captain Leathers?

A. Before the charter I repaired her.

Q. What repairs did you make?

A. Some repairs by contract; new cylinder, timbers, and different things. I repaired her wheels and worked around her cabin; laid her dunnage.

Q. How were the gallows-frames?

A. Very good; had her wheels off her once.

58 Q. Staunch and sound and tight?

A. Yes, sir.

Q. What was the condition of the boat when Captain Leathers took her?

A. In, I should say, a No. 1 condition.

Q. Did you ever examine her timbers?

A. Yes, sir; I had her dunnage up once.

Q. In her hold?

A. Yes.

Q. How did you find her timbers?

A. Good; she was solid thirty feet back from the stem. You could not get your hand down between her timbers thirty feet from the stem; timbers all built for service; done some time during the war.

Q. Did you try her plank?

A. No, I did not try her plank.

Q. Was her kelson sound?

A. Yes, sir.

Q. Did you examine her carefully?

A. Yes, sir.

Q. Just tell exactly how you found her.

A. In a No. 1 condition; everything sound as far as I could see; I did not cut into her; I was not inspecting her and did not cut into her to see; but as far as I could see she was perfectly sound.

Q. You run on her?

59 A. Yes, up to the very day she was chartered.

Q. State whether or not that boat needed much work to be done on her while you were on her?

A. No, she did not.

Q. Were her gallows-frames tight or loose?

A. Solid; perfectly tight; we had the wheels off putting the cylinder timbers in.

Q. Was the wood-work of her machinery well braced?

A. Yes, very well braced.

Q. Do you know whether her machinery moved around or not?

A. No, no more than ordinary; like any other steamboat.

Q. How were her decks?

A. Very good; I had the after end of the boilers up; sheathed the after end of the boilers. The only place there was any bad speck about the deck was under the after end of the boilers, where the boilers set. The dropping of hot water from the gauge-cocks had made it soft; I raised the after end of the boilers up and sheathed under there.

Q. Was the wood sound or not?

60 A. For about five feet right across the boilers where the hot water dripped from the water-cocks, saving that place where the boilers stood, the deck was perfectly sound.

Q. Are you able to state if that boat was seaworthy?

A. Yes, sir; she was as far as her hull was concerned; that is, as far as I pretend to know.

Q. How were her wheels?

A. Very good; I repaired the wheels that summer.

Q. Did you see her after Captain Leathers gave her up?

A. No, I did not.

Q. Did not you ever see her after Captain Leathers gave her up?

A. I saw her, but I was not on board of her.

Q. Did you go there to look and examine the damage that was done to her?

A. No.

Q. Did you consult certain or any carpenters or contractors as to what they would repair the wheel of the Vicksburg, and the damage done to her wood-work?

A. Yes, sir.

Q. Who requested you to do that?

A. Captain Work.

Q. What was the result of your enquiries from these parties to do this work?

61 A. There was a bid made verbally and I put it on paper for the benefit of Captain Work.

Q. How much was it?

A. I do not recollect.

(Document handed to witness.)

Q. Look at that and see if that is it?

A. Yes; that is the one I signed; I did not make it out; Captain Work made it out, I think, by my directions.

Q. What was the result of your enquiries from these carpenters?

A. Six hundred and fifty dollars.

Q. What was the lowest they would do the work for?

A. They agreed to do the work for that much money after an inspection.

(Objected to on the ground that the parties who made the examination are the only witnesses that can swear to these things.)

Q. Who made this?

A. P. Dalston, Cha's Hoffman; I don't know where M'r Dalston lives; they have a place of business here on the levee; they all live in New Orleans (Work and Dalston); I don't know where M'r Hoffman lives; somewhere in the up-end of the town; they have a place of business on the levee, next to Noble and Woods; they have an office there.

62

Q. Was her shaft covered up with timber?

A. No.

Cross-examined:

Q. What business have you been following for the last six or eight years?

A. Ship-carpenter.

Q. Where have you followed that business?

A. On the river I have been ever since the surrender.

Q. Running on the river as a carpenter?

A. Yes, sir.

Q. When was it you made this examination you spoke of?

A. I do not know the time; I could not say the date; I do not remember.

Q. You don't know what year it was?

A. I don't know, I don't remember the year or date, but immediately after the Vicksburg broke her shaft.

Q. You said that you repaired this vessel?

A. Yes; during the summer months in 1868.

Q. You never took your mallet and chisel and cut for the purpose of seeing the condition?

A. No; I did not.

Q. You just judged from the external appearance alone?

A. Yes, sir; her timbers were all scraped; her hull cleaned out.

63

Q. Who did that?

A. Laborers, negroes; all her hold was salted and dunnaged.

Q. From your observation of that hull, how many years do you thin it could have run and been a good hull?

A. I think it would run until to-day and be a better hull than a good many of those running now.

Redirect:

Witness says: The Vicksburg was built in days when they did not throw steamboats together.

(Signed) H. J. DUDLEY.

Testimony taken before Alfred Ingraham, esq., commissioner of the United States.

Given Campbell, esq., for libellant; Mess'rs Randolph, Singleton, and Brown for respondent.

NEW ORLEANS, *May 30th*, 872.

M. J. MCADAMS, a witness of lawful age, being duly sworn, deposes and says:

My name is M. J. McAdams. I am thirty-six years of age and re-

side at No. 250 Erato street, in the city of New Orleans. I am a ship-carpenter; have been engaged in that business for nineteen years.

64 About the first June, 1869, and after the steamboat Vicksburg had broken her shaft, I examined her to see what it would cost to ship her wheel, and rebuild it, and to furnish the new material for this purpose; I gave my estimate to M'r Dudley, verbally; I presumed that it was worth about six hundred and fifty dollars to do the work necessary to be done, and to furnish the materials. This estimate included the rebuilding the bulkheads, the gallows-frame, pitman, and wheel.

(Signed) M. J. McADAMS.

Sworn and subscribed before me this 30th day of May, 1872.

(Signed) ALFRED INGRAHAM,
Comm'r of the U. S.

D. C. McCAN, a witness of lawful age, being duly sworn, deposes and says:

I am fifty-six years of age; I live in the city of New Orleans; I am a foundry-man; have followed the business for twenty-five years. I examined the steamboat Vicksburg about the month of June, 1869, at that time lying at the levee at New Orleans, for the purpose of making an estimate for a new shaft; I saw her shaft was broken and made at the time an estimate of the cost of a new shaft for her, at a price I could afford to do the work.

65 The paper hereto annexed marked "Exhibit A" is my original estimate, made at the time; I could not have completed the work for the *same* stated in less time than thirty days; by that I mean the work mentioned in Exhibit A.

Cross-examined by M'r Singleton:

If I had gone immediately to work without accidents, and working day and night, I could have completed the work in sixteen days.

Redirect:

If the first casting made had a flaw in it, I would have been obliged to make another. In such case it would have delayed the work three or four days. It sometimes happens that a casting has a flaw in it. When we push a job through in the way I have spoken of we charge double price for it.

(Signed) D. C. McCAN.

Sworn and subscribed before me this 30th day of May, 1872.

(Signed) ALFRED INGRAHAM,
Commissioner of the U. S.

NEW ORLEANS, *June 4th*, 1869.

Capt. G. P. WORK,
St'r Vicksburg.

DEAR SIR: I propose and will agree to furnish for the Vicks-

66 burg one new shaft and one new cylinder-head, and fit the same in place on board complete for the sum of twelve hundred dollars ($1,200) to be furnished within thirty days.

Respectfully yours,

(Signed) D. C. McCAN,
Per J. D. THOMPSON.

Testimony taken before Alfred Ingraham, esq., commissioner of the United States.

Given Campbell, esq., of counsel for libellant; Mess'rs Randolph, Singleton, and Brown for respondent.

NEW ORLEANS, *May 31st*, 1872.

Testimony of George P. Work.

GEORGE P. WORK, a witness of lawful age, being sworn, deposes and says:

When Captain Thomas P. Leathers broke the shaft of the steamer Vicksburg I regarded her time at the lowest estimate to be worth seventeen hundred and fifty dollars (1,750) per month, being the amount that Captain Leathers was paying for her at the time.

(The witness being shown the account marked "Exhibit O O" attached to his deposition, says:)

The estimate and items of said account are correct, except as hereinafter explained. The boat laid in the port of New Orleans after
67 the break fully sixteen days. The item of one hundred dollars as charged in above account for night-watchman is not correct, except in this way: I paid him, said watchman, for sixteen days' watching at the rate of one hundred dollars per month, and I also paid the day and cabin-watchman for sixteen days' each at the rate per month charged in said account. I also paid wharfage at the rate of five dollars per day for only sixteen days.

The charge in the account for two tarpaulins lost is correct. I regard thirty dollars for each tarpaulin as a low figure. When Captain Leathers received said boat from me there were one hundred and fifty boxes of coal upon her which Captain Leathers received, and agreed to return a like number of boxes of coal with the boat, or pay for it at the rate of sixty cents per box, neither of which he has done. The charge of $60 for jack-staff is correct, having cost that amount. I never repaired the jack-staff. The item of 1,800 boxes of coal to take the boat to Louisville is correct, as I paid out that amount for said coal, say $990. The bill of Kennett and Bell for stores to carry the boat to Louisville was
68 paid by myself. The item as paid by Captain Kline is correct, and I paid and refunded the amount to Captain Kline.

(Signed) GEO. P. WORK.

Cross-examined by M'r Singleton:

Claimant, by his proctor, excepts to the foregoing testimony as being inadmissable under the pleadings.

Sworn to and subscribed before me this 31st day of May, 1872.

(Signed) ALFRED INGRAHAM,
Commissioner of the U. S.

EXHIBIT O O.

Capt. T. P. Leathers to G. P. Work

1869.

For charter steamer Vicksburg for month of May		$1,750 00
CREDITS.		
By sight-draft on John Janney	$525 00	
" cash to Capt. Kirk to pay license	35 00	
		560 00
Balance due on charter		1,190 00
To repairs to machinery, per estimate		1,200 00
Repairs in carpenter's line		650 00
Damage 1 month from 1st June till all repairs completed		1,750 00
Expense keeping boat one month:		
1 night-watchman	$100 00	
1 day "	75 00	
1 cabin "	30 00	
Wharfage, $5 per day	150 00	
		355 00
2 tarpaulins lost, $30 each		60 00
69 150 boxes coal left on board when chartered, @ 60 c.; nine remained when given up		90 00
1 jack-staff broken, cost		60 00
1,800 boxes coal of McCloskey, Bigley & Co., to take boat to Louisville, on one wheel		990 00
Bill of Kennett & Bell, stores, &c.		110 20
Amount paid by Captain John Kline on board during trip to Louisville with boat disabled		587 75
		$7,042 95

Personally appeared before this board Anthony Pauley, who made the following statement:

I was employed on the steamer Vicksburg, as chief engineer, about five weeks. I left her the same evening she broke her shaft, and I considered her safe when I left her, so far as my department is concerned, with the steam I allowed her to carry. So far as the hull was concerned it was my opinion that she was very bad, as it took all the pumps to keep her free. From the last trip I believe she was worse. My attention was drawn to her condition from the fact that her wheel was run over the bank at Grand Gulf, and immediately after the pumps threw so strong that I went down into the hold and found her leaking on both sides of the boat in the vicinity of the wheel. This occurred
70 on my last trip upon the boat. She leaked in this manner about two hours, and after she was pumped out we kept her free by keeping the pump at work. I reduced the working pressure from 122½ to 115 pounds, for my own convenience, as I knew the boilers would trouble me if I carried the full pressure, and my orders when I left the boat was not to carry over 115 lbs. of steam. I never reported the boat to the inspectors, but I intended to do so, but was prevented from it by being called off to Cincinnati rather unexpectedly. I reported the condition of the boat to Captain Leathers; and she is in my opinion a bad boat all over. I am not aware of any want to charter the boat again, but Captain Leathers told me he would not give that amount for her, but was looking out for another boat all the time we had her; one reason was she was cried down as an old boat, and also because he wanted to get another boat that would not require so much watching.

She did not leak as bad while lying still as when under way. I was interested in the charter of the boat. Captain Leathers and myself
71 are now building another boat for the trade.
(Signed) ANTHONY PAULEY.

Sworn and subscribed to before us this 5th day of June, A. D. 1869.
(Signed) J. A. MOFFETT,
" W. C. FLANDERS,
Local Inspectors.

Personally appeared before this board E. W. Baulfe, who made the following statement:

I am now employed as carpenter on the steamboat Henry Ames; was employed last Monday week by the request of Captain Leathers. I was employed as carpenter previous on steamboat Vicksburg. I know no reason why the crew and I left the Vicksburg to go on the steamboat Henry Ames.

Some two weeks before I left the Vicksburg I found one plank on the starboard bow, on the side, broken. I suppose the cause was from striking a drift log. The outer edge appeared sound; the inside, I could not get to it on account of the dead-wood. I did not examine the inside by boring, consequently do not know whether it was sound or rotten. I also discovered one of the floor timbers broken, just be-
72 fore the forward hatch; do not know if there was any more broken, as I had no time to examine; [cannot say if it was rotten, as I had no time to examine it thoroughly. One plank alone, the knuckle-joint, abreast of the doctor, I observed had started off, from two timbers. The planks appeared sound. I did not examine]—(This reference approved. F. B. VINOT, *Dy Clk*)—the timbers to see whether they were sound or not. I had occasion, about six months ago, to stop a leak, in her starboard knuckle, aft the forward hatch. I found, in boring, the wood was decayed in several timbers in that locality. I do not recollect any further if anything unsafe, as far as the hull is concerned. Captain Leathers was aware of these defects two weeks before leaving the boat. She was not leaking any more, when I left, than usual. The dock was put under her two weeks before I left the boat. Captain Leathers had it put under her for the purpose of replacing the stem-band.

(Signed) E. W. BAULFE.

Sworn to and subscribed before this board this 28th day of May, 1869.
(Signed) W. C. FLANDERS,
Do. J. A. MAFFETT,
Local Inspectors.

UNITED STATES OF AMERICA,
District of New Orleans:

OFFICE LOCAL INSPECTORS OF STEAM-VESSELS.

I, Wardwell C. Flanders, local inspector of hulls, and, by regulations of the Treasury Department of the United States, custodian of
73 the records of the board of local inspectors for the district of New Orleans, do hereby certify that the foregoing five pages are true and correct copies of the originals on file and of record in my office.

Witness my hand and official seal at the city of New Orleans this 7th day of June, A. D. 1872.
(Signed) W. C. FLANDERS.

Testimony for claimant, taken before K. Loew, U. S. commissioner, May 26th, 1871.

Present, Thomas Hunton and Given Campbell for libellant; Randolph, Singleton and Browne for respondent.

JOHN FARRELL, sworn for claimant, says:

I have been an engineer for the eight past years. Was on the Vicksburg in March and April, 1868, then under charter to Captain Leathers; was on her until he gave her up.

We met with an accident one evening near Eighteen-Mile Point at about 7 or 8 o'clock; the weather was pretty nice at the time. We were then going up at the rate of 8 or 10 miles an hour; just our ordinary speed. I was on duty at the time. There was no collision; no cause for the accident; it appeared to me to have been an old break.

74 (Objected to by libellant on the ground that the opinion of the witness is not evidence.)

M'r Thompson and myself went and examined and found it had the appearance of an old crack and rusty; this old break extended about three inches into the shaft; the appearance of sound iron immediately upon breaking is bright.

Don't know what the size of the shaft was; never measured it. The shaft was, I think, 12, maybe 14 inches.

The outer edge appearance of the break was rusty, and the inside was bright. There was more brightness at the break than rustiness; over two-thirds, I think.

We never carried the steam the law allows us within 10 pounds while I was on her.

The cargo was very small all the time; she was well officered, manned and equipped. I know all the officers that were on the Vicksburg; they were all competent; they performed their duties faithfully.

There was deep water when the shaft was broken; river smooth at the time.

75 I think the Vicksburg was allowed to carry 132 pounds of steam; I am certain we carried 10 pounds less. We carried 120 pounds at the time of the accident, at the time the cylinder broke, I mean the shaft; the whole machinery was working well.

Q. To what cause do you attribute the breaking of the shaft?

(Objected to, as his opinion is not evidence.)

A. I think it is on account of not being strong enough. Don't remember what injury was done to the wood-work when the shaft broke. The forward cylinder-head was broke by the breaking of the shaft, the piston-head coming forward and hitting it; this could not have been avoided; recollect no other damage to the machinery. Don't know the age of the Vicksburg; she came out before the war; don't know what year; she was called the Louisville before the war; the average life of a boat like this on the river I cannot say.

Cross-examined:

Never saw a break in the shaft before it broke as I never examined it before. Don't know that any steps were taken afterwards to condemn the Vicksburg.

Q. Did you ever give your testimony about this boat before the inspectors?

A. No, sir.

76 Q. Don't you know that the insurance companies attempted to have this boat condemned; and don't you know that you gave your evidence in these proceedings?

A. No, sir.

Q. Did you ever give any testimony at any time in regard to the condition of the hull, machinery, and tackle of this boat?

A. Not until now. The Vicksburg handled well in every way, and worked well in every way, during the time Captain Leathers had her.

Q. You say that all the officers did their duties faithfully whilst Captain Leathers had the boat. Were you on watch all the time?

A. I was on watch every time my turn came, and often when off watch I came down and saw what was going on. I was on watch half each night and half each day.

Q. Can you tell the age of a flaw by its appearance?

A. No, sir. When I examined the flaw I could not tell how old it was; it might have been there for a life-time and might have been only one week old.

Q. Don't you remember that some time before this break the
77 Vicksburg run one of her wheels over a log or to the bank?

A. No, sir. M'r Pauley was engineer during the time M'r Leathers had the Vicksburg; also James Thompson and myself. I regarded the Vicksburg as a safe boat, suitable for the trade she was in. I am now in Captain Leathers' employ.

(Signed) JOHN FARRELL.

Sworn to and subscribed before me this 26th May, 1871.

(Signed) K. LOEW,
U. S. Commissioner.

E. W. BAWLFE, sworn for claimant, says:

I am a carpenter, and have been since 1861—a ship-carpenter; I was on the Vicksburg while she was under charter to Captain Leathers, all the time. Examined the shaft after it broke, to a certain extent. Observed that one part where it had broke looked brighter than the other. I observed that the dark part was from a former break.

The damage to the wood-work was very little; I think $2.50 would have repaired the damage to the wood-work. The damage was
78 so slight to the wood-work that we paid no attention to it.

Can't tell the age of the Vicksburg; judge her to be six years old. I examined the boat critically in her timbers; had cause to do it; her hull was not very good.

One trip, coming down the river, before the break, we had lost her stem-band; don't know for what cause.

When we came to New Orleans we were obliged to put the dock on her to put another one in. In putting the dock on her we found there were some planks broken, between 8 and 14 feet from her stem. The planks seemed to have given way by something striking the boat, and they seemed to be very soft. She was filled in between her timbers to make her solid for a gunboat.

We found several times that she made water, and I was compelled to go down to stop the holes.

I should not think the hull of the Vicksburg was worthy of repairs necessary in order to put her in a seaworthy condition. They might have taken out everything but the keel, and taken out what is rotten and putting in new timber, and thus making her seaworthy; but don't think she was worth that.

79 I was up at the time the shaft broke; it was fair weather; the river was ordinary, not rough. Can't account for the breaking of the shaft, except it was the flaw or the working of the machinery. I don't think the wood-work was sufficiently strong to hold the machinery. Every revolution the engine made it work more or less upon the wood-work, and made it shake. Never had any conversation with M'r Work in regard to this affair, except when we had the dock under her, and I think M'r Work was present, and his attention was called to the breaking of the planks in her hull; but I am not certain that Work was there.

Q. Don't you recollect that Work was on the boat one time, and his attention was called to these timbers; that he asked you if you could not remedy it, and your reply was that the timber was not sufficiently strong to hold the necessary fastenings?

(Objected to because the question is leading.)

A. Don't remember that Work ever asked me such a question. As far as my judgment goes the Vicksburg was well manned, offi-
80 cered, and equipped while under Captain Leathers.

Cross-examined:

It is no part of the carpenter's business to examine the machinery of a boat; his business is confined to the wood-work.

Being asked, as carpenter of the boat, is it not your duty, for the safety of the lives of the persons aboard, to see that the wood-work is sufficient to hold the machinery in its place, and, if not so, to inform the captain of the fact?

A. I never heard that a carpenter had to do this. I never had any orders from the custom-house that I should look into such matters and report to the captain. I am employed by the captain, and what orders I receive from him I obey.

Q. Do you consider a boat safe when her timbers are insufficient to keep the machinery in its place?

A. I don't think such a boat would be safe.

Q. Would you engage your services as carpenter on a boat which you would consider unsafe?

A. Yes; I did it on the Vicksburg.

(Question repeated.)

A. I have already answered this question; I might do it under
81 certain circumstances.

Q. Were your necessities at the time you engaged on the Vicksburg such that you would go on a boat you would consider unsafe, your life in jeopardy on account of the unseaworthiness of the boat, for the sake of getting some salary?

A. My necessities were not such at the time to take such a chance. I did not consider the Vickburg safe when I went on her; I didn't take all my tools and clothes with me on board. Took my tools on afterwards as I needed them. Have not all my tools and clothes on the Natchez now. Have a home at present. When I went on the Vicksburg I did not even have a boarding-place.

Q. Where did you leave your tools and clothes?

A. I left them at the office of Adams and Dixon; they charged me nothing for keeping them. I am now on the Natchez, under Captain Leathers; consider her a safe boat. I never examined the whole length of the hull of the Vicksburg; examined one-half of her, and spent
82 nights and nights in stopping her leaks. On the first day I left New Orleans the Vicksburg had six inches of water in her hold,

which we stopped with tallow, etc.; this was in consequence of her hull being rotten. I should think she would leak even tied to the bank; think she leaked when Leathers took her. Am neither a blacksmith nor machinist, but have worked in iron; it is a part of my business, bolting, etc.

Q. Is it a part of carpenters' business to manufacture iron any way?

A. No. I couldn't tell from looking at the shaft when the flaw occurred.

Q. Have you ever given your testimony about seaworthiness or unseaworthiness of the Vicksburg?

A. I was called to the custom-house one time to give my testimony about the condition of the Vicksburg after the accident. Can't say whether it was a year or more after. As regards the hull, I gave the same testimony I have given here; I might not have mentioned as many things as I have done here.

Q. Is your memory fresher now as to the condition of the boat than it was then?

83 A. No. I then answered the questions propounded to me about the same as I have now answered the questions asked me.

Q. Have you not volunteered anything upon the questions that have now been asked you?

A. I don't know that I have.

Q. Don't you know that when Capt'n Leathers had this boat, that on one occasion, in rounding out from the bank, a wheel of the boat was run over the bank or a log?

A. No; nothing more than usual.

Q. Don't you know she did so in rounding out a' Grand Gulf?

A. No, sir; it is usual for a boat when landing to run her wheel out on the bank. Some parts of the hull of the Vicksburg were very rotten; can't say how much. Did not know that any attempt had been made to condemn the boat. I received an order to call at the custom-house; went there and answered the questions they asked me; did not know what the object was. I suppose I knew I was then giving testimony before the inspectors; I didn't know there was any other inspectors here but M'r Rogers; found out afterwards that they were inspectors; don't
84 know that I was at the inspector's office giving testimony; my testimony I believe was reduced to writing. I have an idea there is an inspector's office in town; where it is I don't know; know nothing about it.

Re-examined:

Have no business with inspectors; no license is necessary for me, and consequently have no reason to know anything about inspectors.

(Signed) C. W. BAWLFF.

Sworn to and subscribed before me this 26th May, 1871.

(Signed) K. LOEW,
U. S. Comm'r.

Testimony for respondent, taken before K. Loew, United States commissioner, this 4th day of November, 1871.

Present, R. H. Browne, of Randolph, Singleton and Browne, for respondent; Given Campbell for libellant.

ANTHONY PAULY, being first duly sworn, says:

In the month of April, 1869, I was engineer part of the time on the

steamer Quitman, and part on the steamer Vicksburg, during the time Capt. Leathers held her under charter from Captain Work. Went on the Vicksburg when the charter first commenced, and left her the Saturday evening before the accident occurred. Have been an engineer
85 about 12 years, and about 15 years in the steamboat business. I am licensed a first-class engineer.

Q. State, if you know, what was the condition of the Vicksburg while in the possession of Captain Leathers under that charter, as to her machinery and wood-work?

A. She was in a bad condition. I think she was a bad boat all over. When I took charge of her I deducted ten lbs. of the steam allowed her by her certificate, and so directed my assistant to do. I believe her machinery would have given me trouble if I had not done so. I knew the boilers were eight or nine years old, besides. The foundation of the machinery was bad; it was almost impossible to keep it in its proper position in working. I think the Vicksburg was about nine years old. I think she had undergone some repairs prior to Leathers taking possession of her. Don't know to what extent. I think it was a difficult thing to find a suitable boat for that trade at the time Captain Leathers chartered the Vicksburg. I never saw the machinery after the accident. Saw the Vicksburg at Louisville shortly after the accident, but did not examine her. I ran the Vicksburg with moderation; the reduc-
86 tion of the steam-boilers show it. I examined the boilers; their condition was such that it induced me to cut down the steam.

Cross-examined:

I was in no way interested in that charter. I am on the Natchez now. Am interested in the Natchez indirectly.

Q. How are you interested?

A. Indirectly.

Q. In what way indirectly?

A. My brother-in-law is the owner of her. My sister is not interested in her. I am employed by Captain Leathers now. I had a conversation with Captain Leathers during the charter in regard to the condition of the boilers. I told him I didn't know if I could get along with the boilers; this was the same day I went on board after I had examined the boilers. After we had started up the river, I drew Captain Leathers' attention to the way the engine was working and the gallows-frame. I called his attention to that because it was working, instead of being steady. Captain Leathers looked at it. I got along with the machinery by using it with moderation. The accident did not occur while I was on her.

Q. Didn't you know that Captain Leathers wanted to recharter her?

A. No, sir.

Q. Didn't you give your testimony before the local board of
87 inspectors in relation to the Vicksburg, and as to her condition while you had charge of her as engineer under that charter, some time in the summer of 1869, about 5th June, 1869?

A. Yes, sir. I did not swear in that examination that I was interested in that charter.

Redirect:

I had trouble with the boilers frequently. The flues were patched, and were leaking all the time, more or less. We were, as a general thing, behind time in our trips.

(Signed) ANTHONY PAULY.

Sworn to and subscribed to before me this 4th day of November, A. D. 1871.

(Signed) K. LOEW,
U. S. Commissioner.

Testimony taken by consent, on November 17th, in the office of Mess'rs Randolph, Singleton, and Browne, New Orleans.

Present, Given Campbell, esq., for libellant, and Mess'rs C. B. Singleton and A. H. Browne for respondents.

Captain T. P. LEATHERS examined for the respondent:

Q. State the facts about the time you hired that boat, and how long you hired her for, etc.

A. It was some time in May—the latter part of April or the first
88 of May—1869, about the 28th of April or the 1st of May, 1869. I agreed to take the steamboat Vicksburg and run her at the rate of $1,750 per month, and agreed that the time should be two months, and pay the charter *the* weekly. I was to take her with M'r Frank Corkery, who owned the bar, and was steward; as steward he had charge of the cabin-pantry, cook-house, and bar-room; he was to represent the owners of the boat, to see she was properly cared for and everything to be kept in apple-pie order on board of her; we run her awhile, and found that things about her were pretty shaky; and my carpenter called my attention to some work in supporting the bridge-tree and gallows-frame. I took Captain Work on board and pointed it out to him.

Q. Was this done before you signed the charter?

A. No; this was while I was running. He asked the carpenter what it would cost to fix it—to stiffen the gallows-frame and bridge-tree. The carpenter told him there was nothing there to fasten to; he pointed out that there was no wood-work there to fasten anything to, unless they put in new beams. We went on. I think we made six trips.

Q. State, after he had consulted with the carpenter, what did he agree to do or decide on?

A. He could not do it unless he put in new beams, new timbers to fasten it. He showed Captain Work the beams were all decayed, so they could not be fastened to, unless he put in new beams.

Q. Did he order new beams to be put in?

A. No; he did not want to go to that expense; said he would not stand the expense. She ran on. I think we made six trips before her shaft broke.

Q. Under what circumstances did her shaft break?

A. The shaft was a small one, in the first place, and it was cracked. Showed the crack in the shaft—perhaps a third of it—before it finally let go.

Q. Was it a new or an old break?

A. About two-thirds new and one-third old.

Q. Whereabouts did that accident occur?

A. Twelve or fifteen miles from town.

Q. Were you running fast or slow?

A. Going along about the usual rate.

Q. How many miles an hour was her usual gait?

90 A. Her speed was about ten or eleven miles an hour.

Q. What quantity of steam did you carry on that boat? Tell, if you know.

A. She was allowed, I think, about one hundred and thirty pounds by

her license. She was allowed 130 lbs. of steam, or thereabouts, more or less.

Q. What did you usually carry with her?

A. Carried about 115 or 120; not more.

Q. What sort of weather was it when this accident occurred?

A. Beautiful weather; about sunset in the evening.

Q. What sort of water was there?

A. Smooth, deep water.

Q. Was the river low or high?

A. The river was high; full bank.

Q. What did you do with her after this accident occurred?

A. I brought her back to town and returned her to Frank Corkery, according to my understanding.

Q. Your understanding with whom?

A. Captain Work.

Q. When did you have that understanding with him?

A. When I took her. When I took charge of her I was to give her up to Frank Corkery when the eight weeks were out.

Q. Did he take charge of her, or what did he do?

91 A. He staid here, and Captain Work received her from him; then he went on the Ames, as steward, with me, after he delivered the boat over to Captain Work. I think Captain Work would not receive her until the eight weeks were out. That is my understanding. He refused to receive her at the time from M'r Corkery. I know it. He told me so himself.

By counsel for libellant:

Q. Captain Work did it?

A. Yes, sir; he would not receive her until the time (eight weeks) had expired.

Direct examination resumed:

Q. That is, he would not receive her from M'r Corkery?

A. He would not receive her from M'r Corkery.

Q. What did Captain Work do with the boat?

A. He took her to Louisville, and built a steamboat called the Wade Hampton, and put her engines in her.

Q. Do you know why he did not repair her here?

A. Yes, sir; she was not worth repairing; could not repair her. She was wore out.

Q. About how old was she?

92 A. About nine or ten years old. When he declined—or when he said he would not receive her until the time expired, and that he wanted me to repair the damage, the broken shaft, and I told him the boat was not worth a shaft, was not fit to run if she had another shaft in her, and he said he meant to hold me for the broken shaft—I went to M'r Cooper, the inspector, and I asked him to come with me down and examine, and see if he would permit that boat to run when the shaft would be in, for if I had to put the shaft in her I would, and pay for it, and let her go. He said he would not go to the boat until she was ready to run, until she was repaired and receiving freight and advertised to run. I went to M'r Flanders, the inspector, and he told me the boat was only permitted to make the season out in Ouachita, and her papers would expire; or, in other words, she would have to stop as soon as she quit the Ouachita.

(Objected to.)

Then I went to M'r Tho's Adams and I demanded from the under writers an inspection of that steamboat, and he ordered M'r Cooper to make a survey on that boat, which M'r Cooper declined. M'r
93 Cooper told me to take her dunnage up and he would inspect her. There were some hot words between me and him. I refused to take her dunnage up, and I told him if he could find a sound stick of timber in her I would repair her. I thought I had complied with all the understanding I had with Captain Work, and I paid him for the time I had her.

Q. Do you know what became of the hull?

A. I saw it at Portland, as I came out with the Natchez, five or six months after the accident occurred, taking the machinery out and putting it into the Wade Hampton.

Q. What was the hull of such a boat as the Wade Hampton worth to make her that time up there?

A. I suppose it cost $16,000 or $18,000—$16,000.

Q. When Captain Work went on the boat with you, and you pointed out the defects you have already stated, how many trips was it after that before the shaft broke?

A. I think about two trips.

Q. Were the timbers necessary to steady her which the carpenter spoke of? Did that contribute any to the safety of the shaft?

A. Her machinery must be held steady, or it will give away.

94 Q. What is the effect on the machinery of not being held steady?

A. A crack and break after a while, I presume.

Q. Can there be any doubt of it being injured?

A. No doubt of its giving way, if not kept steady in line.

Q. What is the usual life of a steamboat of that character?

A. About five years; six sometimes.

Q. What was her first name?

A. The Louisville, when she first came out; then the yankees caught her in the war, and named her the Ouachita; then after the war she was called the Vicksburg; she was a gunboat during the war.

Q. Did you examine her critically—give her a close examination?

A. Yes, sir, I did.

Q. From your knowledge, would you say she was not worth repairing?

A. She could not be repaired; she was worn-out all over, except her cabin; she had a fine cabin and fine outfits in it.

Q. Do you know what became of the cabin?

A. It was on the Hampton, cabin and engines; nothing else, I believe.

95 Q. Were her boilers put in the Hampton?

A. I think not; I do not think they could go anywhere; they were not very good in the Vicksburg; her steam had been reduced by my engineer on her.

Q. What did it cost to build the Hampton?

(Objected to as entirely irrelevant.)

A. I suppose it cost about $45,000.

Q. What interest did Captain Work have in her?

A. I do not know.

Q. Did he ever tell you?

A. No.

Q. Had the boat been partly or generally repaired before you took charge of her, or what repairs had been made on her?

A. I think her cabin had been put in sound order; the boat was not

her license. She was allowed 130 lbs. of steam, or thereabouts, more or less.

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A. I do not know.

Q. Did he ever tell you?

A. No.

Q. Had the boat been partly or generally repaired before you took charge of her, or what repairs had been made on her?

A. I think her cabin had been put in sound order; the boat was not

repaired; the hull had not been repaired for one or two years, probably, from the looks of it; I had nothing else to judge of it by.

Q. You say the cabin had been repaired.

A. The cabin was in good condition; I mean, when I say not repaired, the important part of the wood-work had not been repaired.

96 Q. M'r Corkery stated that at the time you chartered this boat it was easy to have obtained a suitable boat to run in that trade; how is that?

A. I was in treaty for a boat to run there when I took her; I was trying to get the Ames, which I did not succeed in getting, about the time I had to give the Vicksburg up.

Q. I ask if it was an easy matter to obtain a suitable boat to run in that trade at that time or a difficult matter?

A. No; there were none here that time to be had.

Q. Why did you make the offer, as M'r Corkery stated you did make an offer to recharter that boat, if she was in bad condition?

A. I do not know that I did make the offer; I have no knowledge of it.

Q. You did not make it, then?

A. I do not know that I did; I asked M'r Corkery to see Captain Work, and see if he would take $1,200 a month for her; I did not offer it; I asked M'r Corkery to make an enquiry, but not to bind me to take her for any length of time, for I knew she could not go.

Q. What damage was done to the wood-work by the breaking of the shaft?

97 A. None; not $10; the shaft broke in the main journal, and the wheel turned in against the bulkhead. There was nothing injured. Cracked the forward cylinder-head, all the damage done besides breaking the shaft.

Q. Then a cracked front cylinder-head did not injure the wood-work?

A. No.

Q. I understood you to say that M'r Corkery, as the agent of Captain Work, delivered that boat to him.

A. Yes, sir; received her from me, and turned her over to Captain Work, all according to understanding.

Q. You say, then, you were to deliver the boat to M'r Corkery as the representative of Captain Work?

A. Yes, sir.

Q. Did or did not M'r Corkery so receive her from you, as the agent of Captain Work?

A. Yes, sir.

Q. What would it have cost to have put that shaft in her, if you know?

A. I' would cost about $600 or $700; eight hundred dollars, maybe.

. And to repair the cylinder-head?

A. It would cost about eight hundred dollars to have done the work.

98 Q. To have done the whole work, put in a new shaft, and complete the damage done on that occasion?

A. Yes, sir; Armstrong offered to put a shaft in for $800.

Q. To make all the repairs necessary?

A. There was none necessary but the shaft and cylinder-head, and offered to do all for $800.

(Objected to anything M'r Armstrong might have offered.)

Q. Did you ask M'r Armstrong to make an estimate on it?

A. Yes, sir; I think M'r McCan made an estimate on it. M'r Armstrong is dead now.

(No cross-examination.)

(Signed) T. P. LEATHERS.

JOHN JANNEY examined for the defendant.

Q. Were you present when Captain Work chartered the Vicksburg to Captain Leathers, in the spring of 1869?

A. I forget the year, but I was present when the charter was made, on the boiler-deck of the Vicksburg, in 1869, I believe it was; Captain Leathers, M'r Corkery, Captain Work, and myself.

Q. Who had charge of the Vicksburg at the time?

A. M'r Corkery.

Q. Who was to deliver her to Captain Leathers?

99 A. M'r Corkery, and receive her from him.

Q. You say she was to be delivered back to M'r Corkery when Captain Leathers was through with her?

A. Yes, sir; M'r Corkery was left on board by Captain Work, I think, to receive the boat back. M'r Corkery was put in charge of the cabin, and took charge of all the little minutiæ there.

Q. Do you recollect what the terms of the charter were?

A. I made a memorandum that very day, and I have it at my office, $1,750, I think. I took a note that very day when I went to my office, and have got it now somewhere or the other. I can find it; $1,750 a month. There was some privilege about it, I think. These were the terms, $1,750 a month.

Cross-examined:

Q. Was there a privilege of extending?

A. Yes, sir.

Direct examination resumed:

Q. For two months?

A. $1,750 for one month, I believe. I do not propose to be positive about it, but I have my impression. It is a long time since the thing occurred.

Q. What was said, or was there anything said, in reference to guaranteeing the return of the boat?

100 A. There was not anything said about guaranteeing the return of the boat. I was security for the amount of the charter-money myself. There were no papers written, I believe. I was security for the amount of the charter-money. M'r Corkery was to receive the boat back for Captain Work.

Q. Do you know anything more about this matter than you have already stated?

A. No; that is about the extent of my knowledge, I believe.

Q. How old a boat was the Vicksburg?

A. I do not know. If she is the old Louisville—I do not know how old since she was called the Vicksburg; but the Louisville was a boat run before the war, and she was built on the Louisville, I understand. The Vicksburg was built on the Louisville, and the Louisville ran before the war.

Q. How long before the war?

A. I saw her going up Black River in 1861. She was running in 1861. Combs took her up there in 1861, to hide her from the Yankees. The Louisville was afloat in 1861.

Q. You do not know exactly what time she came out?

101 A. I do not.

Q. What is the ordinary average of life of a steamboat of that class?

A. They are pretty old boats at five years old; they manage to keep up sometimes; I have known boats to run here for eight or nine years; a boat is a pretty old boat at five years old.

Q. Have you any personal knowledge of the condition of the Vicksburg at the time that Captain Leathers chartered her; did you examine her, or know anything about her condition?

A. Yes, sir. I have been steamboating on this river since 1847; I never was in the hull of but two steamboats in my life; one, I got drunk and fell in, and the other one I examined—that was the Vicksburg. I got drunk and fell down a steamboat's hull in 1849, and came very near breaking my neck; I was second clerk at the time. I was never in a steamboat's hull before or since, until I went into the Vicksburg's hull.

Q. When did you go into the hull of the Vicksburg?

A. I think a day or two before or after this took place, on the boiler-deck; I went down in company with M'r Corkery; it was with a

102 view to this charter.

Q. M'r Corkery represented Captain Work in showing her to you; did he represent the owner of the boat?

A. He represented M'r Work in showing her to me.

Q. What did you discover in her hull, as to her condition?

A. I could not tell much; I am not much of a judge; I found some bad places about her decks after I came up out of the hold. My experience in steamboat-hulls is not very extensive, only having been down twice; one time fell down, and another time went down.

Q. Then, if I understand you, you did not give it anything like a thorough examination?

A. I would not have known; I am not a judge of anything of that sort about a steamboat.

Q. Have you not been before a commissioner, or sent for, to give your testimony in this case once before?

A. There was a time appointed, but I was not sent for.

Q. Were you not there to give your testimony?

A. I think I was there one evening, before M'r Loew.

Q. Who took you there to give your testimony at that time?

103 A. Work.

Q. He wanted to examine you in this case?

A. Yes, sir; that is the fact. M'r Hunton was the lawyer, I believe; very near a year ago.

Q. What became of this boat after the shaft was broken?

A. Came down to the wharf, and found her lying there, to my surprise, one morning.

Q. Who had charge of her?

A. Captain Leathers gave her up to M'r Corkery.

Q. For whom did M'r Corkery receive her?

A. I do not know whether he received her or not. The captain put her in his charge.

Q. For whom was Corkery acting when he took charge of her?

A. For Work. He was the man she was to be delivered to under the terms of the agreement.

Q. Did you examine the shaft where it was broken—look at it?

A. I could not get to it; I could not see the break in the shaft; I tried to, but could not get up there.

Q. How long was it before Work took possession of her himself, after the break?

A. I do not recollect.

104 Q. You do not know when she started to Louisville?

A. No; I kept no account of it at all.

Q. Do you know anything of the character of the engineers who had charge of this boat when she was in charge of Captain Leathers?

A. I think, so far as those, he had them a long time before and afterwards.

Q. How did they stand as engineers?

A. I am not an inspector or officer; but they always stood very well. One was Thomson, and the other's name I do not know, but I know them very well by sight. I met them on the boat as engineers, but had nothing to say to them.

Q. Do you know who brought her out as the Louisville when she came out?

A. No.

Cross-examined:

Q. What were the terms of this charter party—the terms generally? What was said by the party?

A. Captain Leathers was to pay so much a month. We received from M'r Corkery as Work's agent, and was to deliver her back to Corkery.

Q. When?

A. At the expiration of the charter.

105 Q. What condition was he to deliver her back in?

A. As he found her.

Q. Was her shaft broken at the time he got her?

A. Not that I know of. I did not examine her shaft before or after. I never examined her shaft.

Q. Was she in running condition at the time he got her?

A. Yes, sir; she made a trip or two, I believe. She made a trip, I know.

Q. What was the understanding as to Corkery? Was he to remain on the boat as steward?

A. Yes, sir; and to have the general supervision. He was an agent there of Work's, I think, to deliver the boat and receive her back again.

Q. To look after the cabin, and see all things right there?

A. That was his place, to look after the cabin. He had the general supervision, I think.

Q. Why do you think that?

A. Because Work told Captain Leathers to take her from him and give her back to him.

Q. Did not Captain Leathers employ M'r Corkery as his steward on that boat?

A. Yes, sir.

Q. Do you understand from the charter that Captain Leathers was to obey the instructions of Corkery as to how that boat should be managed under that charter?

106 A. No.

Q. Did you understand from the employment of M'r Corkery by Captain Leathers that M'r Corkery was to obey his instructions as master of that boat, or be independent of him entirely?

Q. You do not know exactly what time she came out?

101 A. I do not.

Q. What is the ordinary average of life of a steamboat of that class?

A. They are pretty old boats at five years old; they manage to keep up sometimes; I have known boats to run here for eight or nine years; a boat is a pretty old boat at five years old.

Q. Have you any personal knowledge of the condition of the Vicksburg at the time that Captain Leathers chartered her; did you examine her, or know anything about her condition?

A. Yes, sir. I have been steamboating on this river since 1847; I never was in the hull of but two steamboats in my life; one, I got drunk and fell in, and the other one I examined—that was the Vicksburg. I got drunk and fell down a steamboat's hull in 1849, and came very near breaking my neck; I was second clerk at the time. I was never in a steamboat's hull before or since, until I went into the Vicksburg's hull.

Q. When did you go into the hull of the Vicksburg?

A. I think a day or two before or after this took place, on the boiler-deck; I went down in company with M'r Corkery; it was with a

102 view to this charter.

Q. M'r Corkery represented Captain Work in showing her to you; did he represent the owner of the boat?

A. He represented M'r Work in showing her to me.

Q. What did you discover in her hull, as to her condition?

A. I could not tell much; I am not much of a judge; I found some bad places about her decks after I came up out of the hold. My experience in steamboat-hulls is not very extensive, only having been down twice; one time fell down, and another time went down.

Q. Then, if I understand you, you did not give it anything like a thorough examination?

A. I would not have known; I am not a judge of anything of that sort about a steamboat.

Q. Have you not been before a commissioner, or sent for, to give your testimony in this case once before?

A. There was a time appointed, but I was not sent for.

Q. Were you not there to give your testimony?

A. I think I was there one evening, before M'r Loew.

Q. Who took you there to give your testimony at that time?

103 A. Work.

Q. He wanted to examine you in this case?

A. Yes, sir; that is the fact. M'r Hunton was the lawyer, I believe; very near a year ago.

Q. What became of this boat after the shaft was broken?

A. Came down to the wharf, and found her lying there, to my surprise, one morning.

Q. Who had charge of her?

A. Captain Leathers gave her up to M'r Corkery.

Q. For whom did M'r Corkery receive her?

A. I do not know whether he received her or not. The captain put her in his charge.

Q. For whom was Corkery acting when he took charge of her?

A. For Work. He was the man she was to be delivered to under the terms of the agreement.

Q. Did you examine the shaft where it was broken—look at it?

A. I could not get to it; I could not see the break in the shaft; I tried to, but could not get up there.

Q. How long was it before Work took possession of her himself, after the break?

A. I do not recollect.

104 Q. You do not know when she started to Louisville?

A. No; I kept no account of it at all.

Q. Do you know anything of the character of the engineers who had charge of this boat when she was in charge of Captain Leathers?

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Q. How did they stand as engineers?

A. I am not an inspector or officer; but they always stood very well. One was Thomson, and the other's name I do not know, but I know them very well by sight. I met them on the boat as engineers, but had nothing to say to them.

Q. Do you know who brought her out as the Louisville when she came out?

A. No.

Cross-examined:

Q. What were the terms of this charter party—the terms generally? What was said by the party?

A. Captain Leathers was to pay so much a month. We received from M'r Corkery as Work's agent, and was to deliver her back to Corkery.

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A. At the expiration of the charter.

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Q. To look after the cabin, and see all things right there?

A. That was his place, to look after the cabin. He had the general supervision, I think.

Q. Why do you think that?

A. Because Work told Captain Leathers to take her from him and give her back to him.

Q. Did not Captain Leathers employ M'r Corkery as his steward on that boat?

A. Yes, sir.

Q. Do you understand from the charter that Captain Leathers was to obey the instructions of Corkery as to how that boat should be managed under that charter?

106 A. No.

Q. Did you understand from the employment of M'r Corkery by Captain Leathers that M'r Corkery was to obey his instructions as master of that boat, or be independent of him entirely?

A. To obey his instructions. M'r Corkery was in a subordinate position.

Q. Then, as I understand it, it was agreed between Captain Leathers and Work that it was part of the agreement that M'r Corkery should remain on her as steward?

A. As steward, and have a general supervision.

Q. With a view of looking after the cabin, pantry, &c.?

A. No. Work's interest generally, I think.

Q. Take care of his interests?

A. Take care of the boat.

Q. Because Captain Work knew Corkery well, and he was a careful steward, and preferred him to remain on her to have strangers on it?

A. Work put Corkery there because he wanted him there to represent him, and get the boat back for him. He left the boat in Corkery's charge as far as he (Work) was concerned.

Q. What was this privilege you spoke ? Privilege of what—extending the time?

107 A. Extending the charter. I think my note at home says so much a month, with privilege of extending, I think, for two months.

Q. After the expiration of that month?

A. Yes, sir.

Q. Do you know anything of Captain Leathers' efforts to recharter that boat just before the shaft broke?

A. Not that I know of.

Q. Think.

A. I cannot remember now.

Q. Were you present when Captain Leathers turned the boat over to M'r Corkery?

A. No.

Q. You do not know what was said by the parties at the time?

A. No; when he gave her to M'r Corkery?

Q. Yes; after the breaking of her shaft. Do you know what Corkery said at the time?

A. No; I do not.

Q. Did you hear what Work said to M'r Corkery in relation to this boat?

A. Do you mean after breaking the shaft?

Q. No; before.

A. I am testifying to conversation between Captain Leathers and Captain Work and M'r Corkery. Captain Leathers got the boat from Captain Work, and Work left M'r Corkery in charge of the boat.

108 Q. State what Captain Work said to M'r Corkery.

A. I cannot recollect what he said to M'r Corkery.

Q. Do you know what it would cost to repair that boat?

A. No; I have no idea.

Q. How was business with steamboats during the summer of 1869? What sort of business did they do; good trips or bad trips?

A. Pretty good business—that year pretty fair. A very good season, I believe, for steamboats. It was a good summer business in the Vicksburg trade that summer.

Q. Were steamboat stocks worth more or less then than they are now?

A. I cannot state. I have no steamboat stock myself. I never had any.

Q. Your business is a steamboat agent?

A. Yes, sir.

Q. Are they doing as good business now as in 1869—making as much money?

A. This is not the summer, but winter. This season has been a very bad season for steamboats.

Q. If you had desired to examine that shaft at that time, could you have made an examination of it?

109 A. No. On account of my infirmity I could not go up there. I could not climb. It is some distance from the deck. I am not much of a climber. I could not go there if I tried.

Q. Could you not stand on the boiler-deck and see if that was a perfect shaft or not?

A. No.

Q. Or the main deck?

A. No.

Q. Could you see a crack in it?

A. I could not.

Q. Was that shaft covered up?

A. No; it was obscured from the upper deck by the bulkheads on the lower deck. I never saw a steamboat-shaft in my life from the deck, but from the wharf.

(Signed) JOHN JANNEY.

Testimony taken by consent, in the office of Mess'rs Randolph, Singleton and Browne, Nov. 24th, 1871.

C. B. Singleton, esq., representing respondent, and Given Campbell, esq., representing libellant.

JA'S A. THOMSON sworn and examined for respondent.

Q. What is your occupation?

A. Engineer.

Q. How long have you followed that business?

110 A. Twenty-one years in this country—on the Ohio and Mississippi and its tributaries.

Q. Did you know the Vicksburg?

A. Yes, sir; I knew the Vicksburg when she was built. I came out on her when she was brought out as the steamboat Louisville.

Q. What year did she come out in as the steamboat Louisville?

A. On the 17th of April, 1861. I believe April 17th, 1861.

Q. Were her engines new, or taken from any other boat?

A. Her engines were taken out of the Kate Frisby.

Q. Were they new in the Kate Frisby?

A. They went to California and came back again.

Q. About what year was it?

A. I do not know the year; but I think the Kate Frisby run about four years before they built the Louisville out of her.

Q. This machinery—the engines—went to California?

A. I did not go to California with the steam-engines, but they say they went there and came back again.

Q. You *said* the vessel with these engines in her loading for California?

A. No.

111 Q. What was the age of these engines?

A. I could not tell you that; but the Kate Frisby run four years, I believe, which I know, and the other boat came out in April, 1861, and the engines were eight years in the Louisville.

Q. When she broke the shaft was in 1869, was it not?
A. Yes, sir.
Q. Were you engineer, then, when she was under charter by Captain Leathers?
A. Yes, sir.
Q. Were you on duty at the time the engine broke?
A. No; my partner was; but I was sitting close by when it broke.
Q. What was the cause of that engine breaking?
A. The gallows-frame was what broke it—the breaking of it.
Q. What was the matter with it?
A. It was in no condition; it was broke down; or I mean to say, that it was working backwards and forwards. It was rotten and old—in the boat, I suppose, since she came out.

Q. What is the ordinary life of a steamboat? What is the
112 average existence of a steamboat before they break down or are not fit for further use?
A. Some of them live a good while.
Q. Take the ordinary existence.
A. Eight years, with very good usage and well repaired every year.
Q. What was the condition of the Vicksburg at the time her shaft broke down? I speak of her general condition.
A. She had been running all the time, and I do not know whether she had been repaired before.
Q. As you saw her, what was her condition as you saw her?
A. The cylinder-timber and all her bed-bottom was loose underneath the shaft.
Q. Was this boat a proper boat to be repaired? State what you know about it; could she be repaired?
A. You would have to build a new boat on her; put a new bottom in her. The boat was a light-built boat when she first came out. I came out on her. She used to be pretty fast, too.
Q. What was the character of the shaft; was it too large or too small, or the right size?

113 A. Too small; always too small. She broke three shafts on that same side. She broke a shaft the first trip ever she came out. I was on her at that time. After the Yankees captured her, she broke another shaft while in the government employ.

By counsel for libellant:

Q. Do you know that of your own knowledge?
A. I did not see it, but I saw two that were broke on her.

Direct examination resumed:

A. (Continued.) I know she did not have the same cylinder on that side that she had when I left her.
Q. What would it have cost to make repairs on the last breaking of the shaft?
A. I do not know there ever was any estimate made on her.
Q. Could you not tell?
A. No. I went off on the Henry Ames. Captain Leathers can tell you more about that than I can.
Q. Did you notice whether this shaft broke in a protected place, or was it unprotected?
A. We never stopped, but rounded to on one wheel. We broke it up at—I don't exactly know where it was, but it was above Nine-mile
114 Point somewhere. We rounded to and came down to the foot of Canal street, and we missed the landing and went down among

the ships; then I took a lamp and went in and looked at the shaft. It looked to me as if it had been previously cracked about an inch and a half. It looked that way, but I cannot swear whether it was or not. The next morning M'r Mitchel was down and some more, but by that time it was all rusty.

Cross-examined:

Q. Did you see those engines come out of the Kate Frisby and go on the Louisville?

A. Yes, sir; I took them out myself—helped to do it.

Q. Where did the Kate Frisby run when she was running?

A. Running generally from Memphis down to Vicksburg.

Q. Did you ever run on her?

A. No.

Q. Do you know when these engines were put into the Kate Frisby of your own knowledge?

A. The Kate Frisby's engines were in her about four years.

Q. Do you know when these engines were put into the Kate Frisby of your own knowledge?

115 A. No. At the time the engines were put in the Kate Frisby I was at Pike's Peak.

Q. Then you do not know of your own knowledge when they were put into the Kate Frisby?

A. No.

Q. You said these engines went to California; how did they go there?

A. In a ship—boat and all. The boat was brought back, and put up in Algiers, across the river.

Q. In a steamship?

A. I do not know whether a sailing-ship or steamship.

Q. Did they go as freight?

A. The whole machinery and everything as freight.

Q. How do you know that?

A. I did not go on.

Q. Did you see them when they started from here to California?

A. No; nor when they came back, either; but I talked to people who did see it. I did not, though. I was second engineer on the Louisville when they took the engines out of the Kate Frisby and put them into her.

Q. How long did the Vicksburg run as the Vicksburg?

A. I do not know anything about that.

Q. Did she run a year?

116 A. I cannot tell you that; I do not know anything about it. I do not know when she was called the Vicksburg. I was on her when she was captured; they put me ashore.

Q. I am not talking of the Louisville, but when she took the name of the Vicksburg?

A. I cannot tell anything about it. I was on the Molly Able; I was in S't Louis.

Q. About what time was it?

A. I think she was called the Vicksburg in 1866.

Q. Were you in the employment of Captain Leathers on board that boat, while he had her chartered, as engineer?

A. Yes, sir; I was chief engineer the time she broke the shaft. Mr. Pauly was generally chief engineer, but he stopped off that trip.

Q. Do you know what change was made in the Louisville prior to her being called the Vicksburg?

A. No. They tell me she was a gunboat, but I never saw her a gunboat.

Q. Do you know what change was made?

A. No, I do not; but the cabin was fixed inside, with the exception of some drops used to hang there.

Q. Did you ever make a critical examination of the hull?

117 A. No, sir; that was not my business.

Q. Whereabouts was the gallows-frames rotten?

A. Rotten on the bottom of the brace that run down where the shaft goes in.

Q. You say the wood was rotten?

A. And the brace-tree was broken down, too.

Q. But whereabouts was the shaft rotten?

A. Both ends of it.

Q. How much of it was rotten?

A. I could not tell that.

Q. Was it all rotten?

A. No.

Q. Well, how much of it was rotten?

A. A little bit of it; enough to make it slip. The same gallows-frame, I think, had been in her ever since the Cotton run into her.

Q. Do you know that to be a fact, and swear to it positively, that that was the same gallows-frame?

A. No; I do not know but there may have been a dozen.

Q. Well, do not be giving your opinion except you are willing to swear to it.

A. You can correct me if I am wrong.

Q. What was the cause of breaking that shaft the first time it broke on the Louisville?

118 A. We went to Paducah, and had about seven hundred tons of freight; before getting to Paducah, at one place, we took about one hundred and twenty-five tons of the freight off her, and afterwards took about eighty tons, and all forward; nearly all off the head; we wanted the old man to shift the buckets, but he would not stop for it.

Q. And what broke the shaft?

A. She had too much dip at the head; she was too much down by the stem; I told the mate of the boat so at the same time. I was on watch when she broke the shaft.

Q. Did that make an extraordinary strain on the shaft?

A. Yes, sir.

Q. Did you ever notice at any time while you were on board of this boat while she was chartered to Captain Leathers that the shaft was cracked?

A. Never until it broke; if I had known that before I would not have run out on her; Captain Leathers would not have taken her out.

Q. You stated you were not on watch, but sitting by at the time the shaft broke.

A. Yes, sir.

Q. Who was on duty as engineer then?

A. J. Ferrel; he is on the Natchez.

119 Q. What kind of an engineer is he?

A. A very good one, as far as I know, and I know him a long time; about six or seven years.

Q. The time the shaft broke was he doing his duty?

A. Yes, sir; the time the shaft broke she did not have as much steam

as the law allowed by ten pounds; the law allowed her 127½ lbs., I believe.

(Signed) J. A. THOMSON.

Testimony taken by consent, in the office of Mess'rs Randolph, Singleton and Browne, November 28th, 1871.

Counsel present, Thomas Hunton, esq., representing libellant, and R. H. Browne, esq., for respondent.

W. CLEAVES examined for respondent.

Q. Were you the mate of the Vicksburg when Captain T. P. Leathers chartered her from Captain Work?

Q. A. Yes, sir; I went mate on her the second trip she went; I was chief mate on her.

Q. Were you on her when the shaft broke?

A. I was.

Q. Whereabouts did that occur?

A. It occurred between Twelve and Fifteen Mile Point; about
120 thirteen or fourteen miles up the river from New Orleans.

Q. What sort of weather was it at that time, and what time of the day did it occur?

A. It was just before dark; it was a beautiful evening; no wind or anything; just before sundown.

Q. What sort of water were you in?

A. In good water; in the usual course of boats running up the river.

Q. At what rate of speed were you running, fast, moderate, or slow?

A. Just going along moderately.

Q. Did you examine that shaft after it was broken?

A. I did the next morning. After we got down we floated amongst the shipping; we floated by the landing, and could not make the landing.

Q. What was the appearance of that breakage and whereabouts was the breakage?

A. The breakage was close to the inside flange; it started under the flange. I was not versed enough in iron to tell whether it was an old break or not, but it was the general opinion it was started before.

Q. What appearance had it?

A. There seemed to be a little place looked like an old break.
121 Q. How was she loaded?

A. She had a very light trip in for the Vicksburg trade; we did not have an ordinary trip in.

Q. Was she too much down by the head or stern, or was she properly loaded?

A. She was properly loaded, as I look at it; as well as I know how to load a boat, and I have been on the river a long time.

Q. How long have you been on the river?

A. I have been mate with Captain Leathers nearly since 1846; I have been steadily with him since 1846; I have been on every boat he ever had; I have been on other boats.

Q. What was the condition of the hull of that boat?

A. It was not very good; she was a little funky in some places—in the knuckles and timber-heads.

Q. Was she dry or did she make water?

A. She made water; she made a good deal of water.

Q. In ordinary running?

A. Yes, sir; we had to watch the pumps pretty steadily—to watch her very close.

Q. What damage was done to the wood-work by the breaking
122 of that shaft? Was there any, or was there much, or how?

A. It knocked the inside bulkhead in.

Q. What repairs had been made on that boat, or had there been any repairs made on her?

A. We had not done any.

Q. What repairs did that hull have made on her just previous to your taking charge of her, or were there any?

A. I do not know whether there were any repairs put on her or not.

Q. Do you know what Captain Leathers did with the boat after the shaft was broken?

A. He brought her up to the wharf next morning and laid her there, and chartered the Henry Ames after that. We shipped some of our freight on another boat; I forget now what boat it was.

Q. You do not know anything about her being turned over to any one?

A. No; I do not know anything about that.

Q. Was there any extensive damage done to the wood-work by this accident, or was it slight?

A. Not very extensive. I do not know what damage was done to the cylinder, timbers, or inside bulkhead—what it would
123 amount to.

Cross-examined:

Q. Do you know whether she struck a log at the time that breakage occurred, or whether she struck the ground?

A. I am willing to swear that she struck nothing; I was standing right on the forecastle; it was a clear evening; I did not see anything in the river, or hear her strike anything; I heard no jar until I felt the jar of the break. I was standing on the same side that the shaft broke, and if there had been any logs in the river I would certainly have seen them.

Q. Suppose there was a sunken log, could you have seen it?

A. No. I have been on the river some time, and I never knew there was a snag or anything there in that part of the river.

Q. If it had been a sunken log you could not have seen it?

A. Of course not. But I know the boat was running in plenty of water and she broke on the outside from the bank. She was running up on the larboard shore and she broke her starboat shaft.

(Signed) W. CLEAVES.

124 *Citation im personam.*

The President of the United States of America to the marshal of the district of Louisiana, greeting:

You are hereby commanded to summon Thomas P. Leathers to comply with the demand of George P. Work, contained in the libel of which a copy accompanies this citation, or to deliver his answer to the same in the office of the clerk of the district court of the United States of America for the district of Louisiana, holding sessions in the city of New Orleans, in ten days after the service hereof, or judgment will be rendered against him by default, which delay is increased one day for every ten miles the defendant's residence is distant from New Orleans, the place

where the court is held. And that you make due return hereof on the 4th Monday of August, 1869.

Witness the honorable Edward H. Durell, judge of the said court, at the city of New Orleans, this 31st day of July, A. D. 1869.

[SEAL.] (Signed) K. LOEW,
D'y Clk.

125 *Marshal's return.*

Received this 2d day of August, 1867, and on the 12th day of August, 1867, served copies of the within citation, plaintiff's petition and documents annexed, on the within-named Thomas P. Leathers by leaving a copy with the wife of said Leathers, Cecile, in the manner following, to wit, at domicil at corner of Josephene and Carondelet, N. O.

(Signed) S. W. REED,
D'y U. S. Marshal.

Submission.—June 18th, 1872.

GEORGE P. WORK
vs.
THO'S P. LEATHERS. } 9481.

This cause was taken up (G. Campbell for libellant, Randolph, Singleton & Browne for respondent), when, after hearing the pleadings, evidence, and argument, the court took time to advise.

Extract from the minutes.—Judgment entered Feb'ry 13th, 1873.

GEO. P. WORK
vs.
THO'S P. LEATHERS. } 9481.

126 For reasons orally assigned, it is ordered, adjudged, and decreed that there be judgment for the respondent and defendant with costs.

Judgment signed Feb'ry 18th, 1873.

(Signed) E. H. DURELL,
Judge.

Appeal.—Entered February 15th, 1873.

GEO. P. WORK
vs.
THO'S P. LEATHERS. } 9481.

On motion of Hunton and Grover, and Given Campbell, proctors for libellant, and on suggesting that the libellant is aggrieved by the judgment rendered herein, it is ordered that an appeal be allowed to the said G. P. Work, from the final judgment herein, to the U. S. circuit court for the district of Louisiana, on his giving bond with surety in the sum of $200, conditioned according to law, and that said appeal be made returnable on the 4th Monday of April, 1873, the next term of the circuit court.

127 *Appeal-bond.*

UNITED STATES OF AMERICA:

District of Louisiana, district court of the United States. In admiralty.

G. P. WORK
vs.
T. P. LEATHERS. } No. 9481. Appeal-bond.

Know all men by these presents that we, George P. Work as principal, and John C. Sinnot as surety, are held and firmly bound unto Tho's P. Leathers in the sum of two hundred dollars, to be paid to the said T. P. Leathers, for the payment of which, well and truly to be made in lawful money of the United States, we bind ourselves, and each of us, our, and each of our heirs, executors, and administrators, jointly and severally, firmly by these presents, sealed with our seals, and dated at New Orleans the 27th day of February, 1873.

Whereas the above-named Geo. P. Work has appealed to the next term of the circuit court of the United States for the 5th circuit and district of Louisiana from a final judgment of the district court of the United States for said district, rendered against him on the
128 13th day of February, 1873, and signed on the 18th day of February, 1873, in the above-entitled cause:

Now, therefore, the condition of this obligation is such that if the above-named appellant shall prosecute his appeal to effect, and answer all damages and costs and satisfy whatever judgment may be rendered against him if he fail to make his appeal good, then this obligation to be void; otherwise the same shall be and remain in full force and effect.

(Signed) G. P. WORK. [L. S.]
(do.) JNO. C. SINNOTT. [L. S.]

John C. Sinnot, surety on the within appeal-bond, being duly sworn, says that he resides in this city and is worth the sum of $200 over and above all his just debts and liabilities.

(Signed) JNO. C. SINNOTT.

Sworn to and subscribed before me this 27th day of Feb'ry, 1873.

(Signed) J. A. CHARBONNET,
D'y Clk.

District court of the United States, district of Louisiana.

129 I certify the foregoing 7 pages manuscript, together with the printed record consisting of 70 pages, to form and contain a complete and correct transcript of the original record in the case of G. P. Work vs. Tho's P. Leathers, No. 9481 of the docket, including all the proceedings had, documents filed, and evidence adduced in the trial of said cause.

In faith whereof I hereto set my hand and the seal of said court, at New Orleans, this 1st March, 1873.

[SEAL.] (Signed) K. LOEW,
Deputy Clk.

130 *Proceedings in United States circuit court. Hearing and submission of cause.—Extract from minutes. November term*, 1872.

NEW ORLEANS, *Wednesday, March 19th*, 1873.

Court met pursuant to adjournment.
Present, Hon. W. B. Woods, circuit judge.

G. P. WORK
vs.
T. P. LEATHERS. } No. 6926.

This cause came on to be heard on the transcript of the record from the district court (G. Campbell for libellant, appellant; Randolph, Singleton and Browne, for respondent, appellee), when, after hearing the pleadings, evidence, and argument, the court took time to advise.

Decree.—Extract from judgment-book, November term, 1872.

NEW ORLEANS, *Monday, March 24th*, 1873.

Court met pursuant to adjournment.
Present, Hon. W. B. Woods, circuit judge.

G. P. WORK
vs.
T. P. LEATHERS. } No. 6926.

131 For reasons orally assigned, it is ordered that the decree of the district court be affirmed; and it is ordered, adjudged, and decreed by this court that the libel be dismissed, libellant paying costs in both courts.

Decree rendered March 24th, 1873.
Decree signed March 27th, 1873.
(Signed) W. B. WOODS,
Judge.

Motion and order for appeal.—Entered and filed March 23rd, 1875.

G. P. WORK
vs.
THO'S P. LEATHERS. }

On motion of G. P. Work, libellant, by his proctor, Thomas Hunton, and on suggesting that there is error in the judgment or decree rendered herein on the 24th day of March, 1873, and that he is aggrieved thereby, it is ordered that he be allowed an appeal to the Supreme Court of the United States on his giving bond, with security, in the sum of $500, conditioned according to law, and that the defendant be cited to answer the appeal.

132 *Bond for appeal.—Filed March 23rd*, 1875.

UNITED STATES OF AMERICA:

Know all men by these presents that we, G. P. Work as principal, and J. G. Richardson, surety, are held and firmly bound, jointly and severally, unto T. P. Leathers in the sum of five hundred ($500) dollars

lawful money of the United States of America, to be paid to the said T. P. Leathers, his heirs, executors, administrators, and assigns, for which payment, well and truly to be made, we bind ourselves, and each of us, by himself, and each of our heirs, executors, and administrators, firmly by these presents, sealed with our seals, and dated the 23rd day of March, 1875, in the year of our Lord eighteen hundred and seventy-five.

Whereas G. P. Work has this day presented a motion to the honorable the circuit court of the United States for the fifth circuit, holding sessions in and for the district of Louisiana, praying an appeal from a judgment rendered against him in the suit No. 6926 of G. P. Work vs. T. P. Leathers:

133 Now, the condition of the above obligation is that we, the above-bounden G. P. Work and J. G. Richardson, will well and truly pay to the said T. P. Leathers, the defendant in said appeal, all such damages as he may recover against us in case it should be decided that the said appeal was wrongfully obtained; or all such damages as may be awarded against the said G. P. Work, appellant, on final judgment.

(Signed) G. P. WORK. [L. S.]
(do) J. G. RICHARDSON. [L. S.]

Signed, sealed, and delivered in the presence of—
(Signed) F. B. VINOT.

Approved in open court.
(Signed) W. B. WOODS, *U. S. Judge.*

134 UNITED STATES OF AMERICA:

Circuit court of the United States, fifth circuit and district of Louisiana.

CLERK'S OFFICE:

I, Francis A. Woolfley, clerk of the circuit court of the United States for the fifth circuit and district of Louisiana, do hereby certify that the foregoing 133 pages contain and form a full, complete, true and perfect transcript of the record and proceedings had, together with all the evidence adduced on the trial of the case of George P. Work vs. Thomas P. Leathers, No. 6926 of the docket, so far as the same now remains of record or on file in said court.

Witness my hand and the seal of said court, at the city of New Orleans, this 5th day of August, A. D. 1875.

[SEAL.] F. A. WOOLFLEY,
Clerk.

I, W. B. Woods, United States judge for the district of Louisiana, do certify that Francis A. Woolfley, whose name is signed to the above certificate as clerk of the circuit court of the United States for the fifth circuit and district of Louisiana, was, at the time of signing said certificate, and is now, the clerk of said court; that said certificate is in due form of law, and that full faith and credit are due to his official attestations as such clerk.

Given under my hand, at the city of New Orleans, in said district, this 5th day of August, A. D. 1875.

W. B. WOODS, *Judge.*

135 THE UNITED STATES OF AMERICA:

Circuit court of the United States, district of Louisiana.

The President of the United States to Thomas P. Leathers, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at the City of Washington on the second Monday of October next, pursuant to a motion & order for appeal of record & filed in the clerk's office of the circuit court of the United States for the fifth circuit and district of Louisiana, wherein George P. Work is libellant and appellant and you are defendant and appellee, to show cause, if any there be, why the judgment rendered against the said George P. Work, as in said motion for appeal mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, this 24th day of March, in the year of our Lord one thousand eight hundred and seventy-five.

W. B. WOOD'S, *Judge.*

136 On this sixth day of April, 1875, personally appeared before me the subscriber, S. W. Reed, and makes oath that he served a true copy of the within citation to T. P. Leathers as stated in his official return hereon.

S. W. REED,
D'y U. S. Marshal.

Sworn to and subscribed before me this 6th day of April, 1875.

F. B. VINOT,
Comm'r U. S. Circuit Court, Dist. of L'a.

(Indorsed:) United States circuit court. No. 6926. George P. Work vs. Thomas P. Leathers. Citation.

Marshal's return.

Received, Mar. 24, 1875, by the U. S. marshal, and on the 27th day of same month and year served a copy of within citation on T. P. Leathers, named herein, by handing the same to him in person in this city.

New Orleans, April 6th, 1875.

S. W. REED,
D'y U. S. Marshal, Dist. of L'a.

(Indorsement on cover:) No. 290. George P. Work, appellant, vs Thomas P. Leathers. Louisiana C. C. U. S. Filed 25th October, 1875

Supreme Court of the United States.

No. 290.

GEORGE P. WORK *vs.* THOMAS P. LEATHERS.

BRIEF OF COUNSEL FOR APPELLANT.

STATEMENT OF THE CASE.

In March, 1869, the libellant chartered the steamer Vicksburg to the defendant for the months of April and May, at the rate of $1,750 per month. The charter money for the first month was duly paid—and $560 was paid on account of the charter for the second month—leaving a balance of what had been stipulated, of $1,190, still due and unpaid. The charter was made verbally, but the terms are admitted in the second article of the answer, so far as the price to be paid is concerned.

It is alleged in the libel and proved that the defendant agreed to deliver the boat to the libellant at the expiration of the charter, in like good order as when received, "ordinary wear and tear excepted."

In the month of May, as is alleged, and before the expiration of the charter, "the machinery of the boat was greatly damaged by the breaking of a shaft and blowing out of a cylinder-head of one of her engines, and her woodwork was greatly damaged."

The boat was then returned to libellant in a crippled and damaged condition, unfit for use.

ASSIGNMENT OF ERRORS.

1. The Court erred in not finding in favor of libellant and in dismissing the libel.

2. The Court erred in not finding due to libellant on charter of the steamboat Vicksburg the sum of $1,190.

3. The Court erred in not finding that the injuries to the steamboat Vicksburg, were owing to the inexperience and incompetency of the engineer employed on said steamboat.

4. The Court erred in not finding due to the libellant the sum of $5,000, due said libellant for damages for breach of contract with Thomas P. Leathers, the appellee.

THE TESTIMONY

shows that, previous to the charter, the boat had been repaired, and she was received by defendant in good condition.

L. W. Cooper, an inspector of steamboats, had examined her before and after the charter, and found her "river worthy," (p. 8.) Cline, (p. 14,) and Dudley, (p. 21,) also prove the good condition of the boat.

The defendant took the testimony of Phelon, Corkery, Pauley, Baulfe, Farrell and Cleavos, all of whom were in the employment of the defendant, at the time of the accident and at the time their testimony was taken.

The testimony of these witnesses generally, has no bearing on the case. The drifts of their evidence is that the Vicksburg was not a new or very good boat—and on the part of some of them, that the shaft was broken in consequence of inherent defects.

It is proved, however, that the Vicksburg had been running for several years—and it is a noteworthy fact that the shaft of an engine, after having been tested and tried for

several years, has rarely, if ever, been known to give way, unless subjected to extraordinary strain.

A better and more rational cause for the breakage in this instance, is found in the fact testified to before the Board of Inspectors, by Pauley, (*who was interested in the charter*,) that the wheel of the boat, on her last trip before, "was run over the bank at Grand Gulf."

This, he says, caused her to leak, and we say, may have fractured the shaft. See p. 26.

But the prominent fact of the case is, that the boat was in good condition when she was chartered; that Leathers, the defendant, desired and offered to re-charter her, just before the breaking of the shaft.

Corkery, p. 10; and Leathers, p. 36.

McCan, foundryman, estimates the cost of replacing the shaft at $1,200, and the time required, thirty days—p. 24.

McAdam, ship carpenter, estimates the repairs of the woodwork at $650.

According to the testimony the libellant is entitled to recover:

Balance of charter money due	$1,190 00
Repairs to machinery	1,200 00
Repairs in carpenter's line	650 00
Loss of boat's time during repairs	1,750 00
Expenses of watchmen, and wharfage, as per statement, p. 26	355 00
	$5,145 00

The law of the case entitles the libellant to the above amount.

The agreement to pay $1,750 per month, for two months, was absolute and unconditional.

The defendant received the boat in good order and condition, and returned her to the libellant in a damaged condition, in consequence of which the damages above set forth were sustained.

Leathers, the defendant, was the owner of the boat for

the term of the charter. He employed his own officers and crew.

There was no legal obligation on the libellant to keep the boat in good running order during the term for which she was chartered. The case is different from that where freighters take up a vessel—the owner retaining the possession and control with his own crew on board.

In the latter case there is no doubt that the owner must keep the vessel sea-worthy.

The case of Spofford, *et al.*, *vs.* Dodge, *et al.*, 14 Mass., 66, is directly in point so far as the principle involved is concerned.

Havelock *vs.* Geddes, *et al.*, 6 Rob. Adm., 10.

A feeble attempt is made to show that one Corkery was on the boat as the agent of the libellant. His testimony, p. 9, shows that he was on the boat, as barkeeper and steward, employed by Leathers; that he had no control of the boat after Leathers took possession. Leathers took his crew off the boat, after the accident—p. 10.

It is submitted that the decree of the circuit court was erroneous.

THOS. HUNTON,
For Appellant.

Supreme Court of the United States.

No. 920.

GEORGE F. WORK, Appellant,

vs.

THOMAS F. LEATHERS, Appellee.

CHARLES A. SINGLETON

and

SINGLETON & BROWNE,

Printers for Respondent.

New Orleans, April 2, 1878.

Daily Picayune Steam Printing Establishment, 26 &

Supreme Court of the United States.

No. 290.

GEORGE P. WORK, APPELLANT,

versus

THOMAS P. LEATHERS, APPELLEE.

The following is the substance of the allegations contained in the libel, and the answers thereto.

1st. That on or about the 31st March, 1869, at New Orleans, libelant, being owner of the steamboat Vicksburg, did charter her for the term of two months from date, to Thomas P. Leathers, for $1,750 dollars per month.

ANSWER.—The claimant admits the correctness of the matters and things alleged in this article.

2d. That Thos. P. Leathers chartered said boat to carry freight and passengers on the Mississippi river and its tributaries; that the charterer received full and unlimited possession of said boat on the 31st day of March, 1869, at which time said boat *was tight, staunch and strong*, with *her machinery in perfect order*, and sufficiently furnished, tackled and appareled for the navigation for which she was intended under the contract; that the charterer agreed to return said boat at the expiration of said charter in like

condition, ordinary wear and tear excepted, and to pay the charter money.

ANSWER to 2d Article.—That respondent did not receive full and unlimited possession and control of said boat; but that one Frank Corkery was libelant's agent, and remained on said boat as steward, and had, as such, control of her cabin, and also looked after said boat generally to see that she was well taken care of while under said charter; that respondent surrendered said vessel to said Corkery when she became disabled, who received her as agent of libelant; that the machinery was not in perfect order when respondent received her as charterer, but the starboard shaft was cracked at the time, although this defect was not apparent; that her boilers were in an unsafe condition; that she was not seaworthy, her timbers being rotten; that there was no *stipulation of warranty on the part of the respondent.*

3d. That the charter money for the first month and five hundred dollars on the second month were paid, and that a balance of $1,190 still remained due, which the libelant refused to pay.

ANSWER to the 3d Article.—That libelant refused to pay anything on account of the charter after the boat broke her shaft, at which time respondent returned the boat to libelant's said agent.

4th. That during the second month of the charter, while said vessel was on a voyage from New Orleans to Vicksburg, her machinery was greatly injured and rendered useless by the breaking of a shaft and blowing out of a cylinder-head of one of her engines, and greatly damaging the wood work.

ANSWER to the 4th Article.—This article is admitted to be true, except as to the damage of the work, which was not injured while in possession of respondent.

5th.—The libelant believes the damage was caused by incompetency, inexperience and negligence of the engineers in charge of the boat at the time; that said damage and injuries cannot be

classed as ordinary wear and tear, and the respondent was bound under the charter to repair said damage and injuries at his own cost and expense.

ANSWER to the 5th Article.—That the matters and things contained in this article are in great part falsely and untruly alleged; that said steamboat while under said charter was well and skillfully managed; that the officers placed in charge of the engines were competent, skillful, experienced and careful engineers; that the accident to said machinery occurred while the vessel was running under 110 pounds of steam, in smooth and deep water; that said machinery was handled at the time with great caution and care, and managed with the utmost vigilance; that respondent is not bound in law nor by any special agreement to repair the damage, for which those in charge of the boat were in no manner to blame; that said damage and injuries were caused solely by the defects in the shaft, as stated above, and which respondent believes were known to the libelant at the time the charter was entered into.

6th. That Leathers delivered at New Orleans the said boat, in her crippled condition, to the libelant, and he refused to make the repairs, and libelant received her, reserving his right of action against said Leathers.

ANSWER to the 6th Article.—That respondent brought said vessel to New Orleans in her damaged condition and delivered her to Frank Corkery, libelant's agent, who received her, and made no reservation or objection whatever.

7th. That the damage and injuries to the boat could not be repaired for less than eighteen hundred dollars.

ANSWER to 7th Article.—Respondent has no knowledge of the matters herein contained, and requires strict proof.

8th. That the failure of Leathers to repair said boat cost libelant five thousand dollars damage, because he was unable to use or charter said boat, and was also compelled to pay wharfage and the cost of a watchman.

ANSWER to 8th Article.—Respondent had no knowledge of the matters alleged in this article, and required strict proof thereof.

9th That Thos. P. Leathers is, by reason of the damage, etc., alleged, indebted to libelant in the sum of $8,040.

ANSWER to 9th Article —Respondent denies all indebtedness to libelant.

The foregoing contains the essence of the pleadings on behalf of both libelant and respondent, and is a concise statement of the pleadings, wherein the matters in dispute are clearly set forth.

In the argument of this case, we propose to show:

1st. *That the steamer Vicksburg, chartered by Geo. P. Work to Thomas P. Leathers, was, at the date of the charter, a very old boat and had attained to that state of decay and rottenness that she could not be repaired; that, in order to put her in a seaworthy condition, it was necessary to rebuild her* DE NOVO; *that libelant did not intend to repair said boat; that he never intended to run her another season, and that the present suit has more of the character of a judicial speculation or judicial gambling, than a sincere and honest effort to repair a loss or injury.*

2nd. *That the shafts of said steamboat were always too small—which was an original defect.*

3d. *That the shaft had an old crack in it, which was the cause of its breaking.*

4th. *That respondent and those under his control as officers and employees on said vessel were in no manner whatever to blame for the damage and injury.*

1st. The Vicksburg was originally called the Louisville, which came out on the 17th day of April, 1861. The engines were taken out of the Kate Frisby. The Kate Frisby had run about four years before her engines were taken out and put in the Louisville. See testimony of JOHN A. THOMPSON, T., p. 41.

Thus it appears the Vicksburg was eight years old when chartered to Thos. P. Leathers, except her boilers, which were about twelve years old.

"Q.—What was the condition of the Vicksburg at the time her "shaft broke down? I speak of her general condition.

"A.—She had been running all the time, and I do not know "whether she had been repaired before.

"Q.—As you saw her—what was her condition as you saw her?

"A.—The cylinder-timber and all her bed-bottom was loose underneath the shaft.

"Q.—Was this a proper boat to be repaired? State what you "know about it; could she be repaired?

"A.—You would have to build a new boat on her; put a new "bottom in her. The boat was a light built boat when she first came out. I came out on her. She used to run pretty fast, too." T., p. 42

Capt. Leathers took the libelant on board this boat and pointed out to him her decayed condition. "He (Work) asked "the carpenter what it would cost to fix it—to stiffen the gallows "frame and bridge tree. The carpenter told him there was "nothing there to fasten to; he pointed out that there was no "wood-work there to fasten anything to, unless they put in new "beams. We went on. I think we made six trips.

"Q.—State, after he had consulted with the carpenter, what "did he agree to do, or decide on?

"A.—He could not do it unless he put in new beams, new "timbers to fasten it. He showed Captain Work the beams were "all decayed, so they could not be fastened to, unless he put in "new beams.

"Q.—Did he order new beams to be put in?

"A.—No; he did not want to go to that expense. Said he

" would not stand the expense. She ran on. I think we made " six trips before her shaft broke.

" Q.—Under what circumstances did her shaft break?

" A.—The shaft was a small one, in the first place, and it was " cracked. Showed the crack in the shaft--perhaps a third of it, before it finally let go.

" Q.—Was it a new or old crack?

" A.—About two-thirds new, and one-third old." T., p. 33.

That the shaft had an old crack in it, will appear from the testimony on pages 28, 29, 33, 43 and 45.

W. H. PHELON, libelant's witness, repaired her in 1868, and put just enough repairs on her to make her hold out for two years longer, during which time libelant expected she would be fit for service. T., p. 9.

That the Vicksburg was absolutely worn out, appears from the fact that the libelant would not repair her when her repairs would not cost exceeding $1,800, as appears from libelant's own statement. T., p. 5.

CAPT. LEATHERS says Armstrong offered to make the repairs for $800.

If this vessel was so staunch, strong, etc., why did not libelant have her repaired, when the cost thereof would amount to so small a sum? If she was the boat libelant represented her to be, he saw that he must give a satisfactory reason for not repairing her, We will quote from libelant's testimony.

" Q.—Why did you not repair the shaft of the Vicksburg, " instead of building a new boat?

" A.—I considered it the duty of Mr. Leathers to do so, as he " had agreed to return me the boat in same condition she was " when he chartered her.

" Q.—Why did it not suit you to repair the Vicksburg?

" A.—*My pecuniary condition, at the time, prevented it,* if I had

"wished to do so; and, further, I wanted a boat of different "dimensions." * * * T., p. 7.

The proctor for claimant, wishing to show that the libelant had not given the true reason for not repairing the Vicksburg, (viz: that his pecuniary condition was such that he could not repair her,) asked him, what was his interest in the steamer WADE HAMPTON, which he built in 1869? Here libelant discovered his dilemma and refused to answer the question; for, had he stated his interest in the WADE HAMPTON, he would thereby have shown beyond all doubt that he was abundantly able to bear the expense of repairing the Vicksburg. So he persisted in his refusal to answer the question, and the proctor for claimant refused to proceed further with the examination, "*and the commissioner adjourns the question for the decision of the Court.*" This was on the 9th of May, 1871, but on the 9th of the following December, libelant answered the question by stating, that he owned seven-sixteenths of the WADE HAMPTON, and that she cost $95,000. T., p. 7.

He was unable to repair the Vicksburg at a cost of $1,800, and yet he was able to build and own seven-sixteenths of the WADE HAMPTON, which cost $95,000. Seven-sixteenths of $95,000 make $41,562 50, which is considerably more than $1,800. What weight can this Honorable Court give to the testimony of libelant? He is, to say the least of it, not candid.

Why, then, did he not repair the Vicksburg? The answer is self-evident. The Vicksburg was worn out, and could not be repaired. This suit is, beyond all doubt, an attempt to make a judicial adventure or speculation. It is a sort of judicial wager; but the foundation of the whole matter is too rotten to win before this tribunal. The District and Circuit Courts failed to see any merit in libelant's demand. Those Courts placed a proper estimate upon the libel, and dismissed it at libelant's cost.

As further proof of the rotten condition of the Vicksburg, the

libelant sold her *staunch, sound and strong hull* for the sum of $1000. See libelant's testimony, T., p. 6.

If the hull had been good, staunch and strong or new, it was worth from sixteen to eighteen thousand dollars; and yet it was sold for one thousand dollars. The hull of the *Wade Hampton*, which was 227 feet long, width thirty-six or thirty-eight feet, and depth of hold eight feet, cost $16,500 or $17,000. The hull of the Vicksburg was over 245 feet long, beam thirty-four feet, and depth of hold seven and a half feet. T., p. 6.

Capt. Leathers says the hull of the Vicksburg, if new, would cost $16,000 or $18,000. T., p. 35.

The average life of such a boat is from five to six years. See Leathers' testimony, T., p. 35. See Janney's, also, T., p. 38.

Thus, it appears the Vicksburg was absolutely worn out, and was too rotten to be repaired.

2d. *That the shafts of said steamboat were always too small, which was an original and serious defect.*

We quote from Capt. Leathers' testimony:

"Q.—Under what circumstances did the shaft break?

"A.—The shaft was a small one, in the first place, and it was "cracked." T., p. 33.

We quote from the testimony of Jas. A. Thompson:

"Q.—What was the character of the shaft—was it too large or "too small, or the right size?

"A.—Too small; always too small. She broke three shafts on "the same side. She broke a shaft the first trip ever she came "out. I was on her that time. After the Yankees captured her "she broke another shaft, in the Government employ," T., p. 42.

3d. *That the shaft had an old crack in it, which was the cause of its breaking.*

On this point see the testimony, T., pp. 28, 29, 33, 43 and 45, which establishes most conclusively this point.

4th *That respondent, and those under his control as officers and employees on said vessel, were in no manner whatever to blame for the damage and injury.*

We have already shown that the Vicksburg was an old and worn-out vessel, and absolutely unfit to be repaired. This appears from the fact that libelant was abundantly able to repair her, but declined to do so, and preferred to break her up and sell her hull for $1000, and her broken shaft for old iron. And her rotten condition also appears from the testimony of many witnesses. The testimony of these witnesses, added to the fact that libelant had her broken up as an old and worn-out boat, outweighs the testimony of all libelant's witnesses who state that she was in good, seaworthy condition. Add to this the fact, that when the shaft broke the Vicksburg was making her usual speed, viz: 8 or 10 miles per hour. She was licensed to carry 132 pounds. Her engineers never put on so much by 10 pounds. See JOHN FARRELL'S testimony, T, p. 28.

Anthony Panley, to the same effect, T., p. 32.

Thos. P. Leathers says she was allowed about 130 pounds of steam, but never carried more than 115 or 120 pounds. T., pp. 33 and 34.

JOHN FARRELL says the weather at the time of the accident "*was pretty nice.*" "There was no collision; no cause for the accident." The cargo was all the time very light. The water was deep; and she had good officers, who discharged their duties properly. T., p. 28.

Thos. P. Leathers says, the weather was beautiful and the water was smooth and deep. T., p. 34.

The claimant has paid all the charter money due up to the time the vessel became wholly unfit for use.

This case is governed by law as developed in the following decisions:

In Putnam vs. Wood, 3 Mass. R., 481, the Court said:

"It is the duty of the owner of a ship, when he *charters her*, or puts her up for freight, to see that she is in a suitable condition to transport her cargo in safety; and he is to keep her in that condition, unless prevented by perils of the seas or unavoidable accidents.

Kimball vs. Tucker et als., 10 Mass., 192.

3 Kent, 5th edition, 205.

Abbott on Shipping, 5th American edition, p. 340.

1 Parsons on Shipping and Admiralty, p. 285, note a.

Devillers vs. Schooner John Bell et al., 6 La. An., 544.

The owner who charters his entire vessel is bound in the same manner as he would be were he to employ her himself in receiv- a general cargo.

Even when the greatest care and diligence have been used to prepare a vessel for her voyage, if in fact she was not in good order, the owners will be responsible for damages resulting therefrom to owners of cargo, unless the damage was in consequence of stress of weather or the dangers of navigation; and when a vessel becomes unseaworthy in deep water, smooth sea and fine weather, the law presumes her to be unseaworthy.

Rathbone vs. Neal, 4 La. An., 563.

Where, without any apparent cause of accident, an accident, loss or injury occurs, the loss is to be attributed to the unseaworthiness of the vessel.

Talcot vs. The Commercial Ins. Co. of New York, 2 Johnson R., 125.

These cases are cited to sustain the position, that there being no apparent or extraordinary cause for the breaking of the shaft, the steamer must, in respect of her shaft, be presumed to have been unseaworthy.

2 Phillips on Ins., sec. 2079

Sneethen vs. Memphis Ins. Co., 3 La. An., 474.

These cases, it is true, involved questions of insurance, but the

principle applies as well to the case at bar, for it is a question of evidence—the question being, did the shaft break from an inherent defect? If so, on whom should the loss fall—on the owner of the shaft, or on the bailee of it? And if on the bailee, for what does he pay his money? He pays his money for a thing so defective that, after the defect becomes apparent, he could not u e it. The defect which existed without his fault must be repaired in the same manner as though he was responsible therefor! We think there is neither law nor equity to support this view of the matter. When the shaft broke, the steamer, for the purposes she was leased to respondent, became absolutely useless. She was no longer of any value to the charterer. Under the circumstances of the case, he was not bound to repair the broken shaft. He could do nothing more than to pay the charter money up to the day when the shaft broke, and return the boat to Corkery, the libelant's agent—which was actually done. The boat was accepted by libelant's agent, without objection. Both the District and Circuit Courts have pronounced against the libelant's demand; and we think this Court ought to confirm these judgments.

Respectfully submitted,

CHARLES B. SINGLETON

AND

SINGLETON & BROWNE,

Proctor for Respondent.

NEW ORLEANS, April 20, 1878.

See Woods C. C. Repts. 5th Circt.
Vol 1. p. 271.